S. Hrg. 101-1127

AVIATION SECURITY IMPROVEMENT ACT OF 1990

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 2822

TO PROMOTE AND STRENGTHEN AVIATION SECURITY, AND FOR OTHER PURPOSES

OCTOBER 4, 1990

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE
36-815 O WASHINGTON : 1991

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S261-32

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii
WENDELL H. FORD, Kentucky
J. JAMES EXON, Nebraska
ALBERT GORE, JR., Tennessee
JOHN D. ROCKEFELLER IV, West Virginia
LLOYD BENTSEN, Texas
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
RICHARD H. BRYAN, Nevada
CHARLES S. ROBB, Virginia

JOHN C. DANFORTH, Missouri
BOB PACKWOOD, Oregon
LARRY PRESSLER, South Dakota
TED STEVENS, Alaska
ROBERT W. KASTEN, JR., Wisconsin
JOHN McCAIN, Arizona
CONRAD BURNS, Montana
SLADE GORTON, Washington
TRENT LOTT, Mississippi

KEVIN G. CURTIN, *Chief Counsel and Staff Director*
WALTER B. MCCORMICK, JR., *Minority Chief Counsel and Staff Director*

SUBCOMMITTEE ON AVIATION

WENDELL H. FORD, Kentucky, *Chairman*

J. JAMES EXON, Nebraska
DANIEL K. INOUYE, Hawaii
JOHN F. KERRY, Massachusetts
LLOYD BENTSEN, Texas

JOHN McCAIN, Arizona
TED STEVENS, Alaska
ROBERT W. KASTEN, JR., Wisconsin

CONTENTS

Page

Opening statement by Senator Ford 1
Opening statement by Senator McCain 2
Opening statement by the Chairman 3
Text of S. 2822 4

LIST OF WITNESSES

Ammerman, Bert, president, Victims of Pan Am Flight 103 68
Busby, Morris D., Coordinator for Counter-Terrorism, Department of State; accompanied by Carmen DiPlacido, Director, Citizen Consular Services, Bureau of Consular Affairs 50
  Prepared statement 52
  Letter of October 4, 1990 58
Busey, Hon. James B., Administrator, FAA; accompanied by Vice Adm. Clyde Robbins, USCG 46
  Prepared statement 48
  Questions of Senator Inouye and the answers 64
D'Amato, Hon. Alfonse M., U.S. Senator from New York 44
Hudson, Paul, chairman, Families of Pan Am 103/Lockerbie; accompanied by Rosemary Wolfe; and Michael R. Lemov 65
Lautenberg, Hon. Frank, U.S. Senator from New Jersey 42

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Airport Operators Council International and the American Association of Airport Executives, statement 81
Air Transport Association of America, statement 85
Frank, Hon. Anthony M., Postmaster General, U.S. Postal Service, letter 85
Mikulski, Hon. Barbara, U.S. Senator from Maryland, statement 81

AVIATION SECURITY IMPROVEMENT ACT OF 1990

THURSDAY, OCTOBER 4, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m. in Room SR-253, Russell Senate Office Building, Hon. Wendell H. Ford [chairman of the subcommittee] presiding.

Staff members assigned to this hearing: Samuel Whitehorn, staff counsel; Carol Carmody, professional staff member; and John Timmons, minority staff counsel.

OPENING STATEMENT BY SENATOR FORD

Senator FORD. Good morning, ladies and gentlemen.

This morning we are here to consider testimony about our government structure and procedures for aviation security. The terrorist bombing of Pan Am Flight 103 in December of 1988 tragically demonstrated that something more is needed to be done to protect Americans traveling by air. This subcommittee held a hearing in April of 1989 to explore the circumstances surrounding the terrorist event as well as the handling of the disaster by the Departments of State and Transportation.

In May of 1989 Senators Mitchell, Lautenberg, and I introduced legislation to establish a commission on aviation security and terrorism to investigate the adequacy of security procedures and requirements. Ultimately, the White House responded by naming a commission to study the Pan Am tragedy and to make recommendations. The commission published its findings in May, and most of its recommendations were incorporated in legislation introduced by Senators Lautenberg and D'Amato. That bill, S. 2822, was referred to this committee and is the subject of the hearing this morning.

I understand that there have been efforts to work with interested parties and to resolve major areas of disagreement with the legislation. I have not been a part of that process, but I look forward to the testimony of the two distinguished Senators and of the witnesses today. I know we all share the desire to fix what is wrong with the system and to improve security for the millions of air travelers.

I have been joined by my friend and Ranking Member, Senator McCain.

OPENING STATEMENT BY SENATOR McCAIN

Senator MCCAIN. Thank you very much, Mr. Chairman, and thank you for holding this hearing this morning, my friend.

There are few things in life that can cause more anxiety, fear and, ultimately, grief than terrorism directed at an aircraft in flight. Following such wanton and depraved actions, it is understandable that those closest to them respond in an emotional fashion. It is rare that such response results in any constructive activity. Today's hearing, however, is an example of that rare occurrence when anger and resentment are channeled in a positive fashion.

I believe it is fair to say that the drastic and much-needed overhaul under way in our aviation security arena owes its origins and intensity to those individuals who had the tragic misfortune to be intimately associated with the bombing of Pan Am 103. I commend their determination and their ability to deal with the frustration and salute their achievement in working through the system to produce a commission report and legislation which form the basis of this hearing.

Any examination, Mr. Chairman, of security as it relates to terrorism must begin with two thoughts in mind. First, the ultimate solution lies not with metal detectors and security profiles but in going to the source. We must address in an appropriate fashion those conditions which give rise to such extreme behavior. I think that is a very important point, given the threats that we hear coming out of the Middle East at this particular time in our Nation's history.

It is vital that we try through diplomatic efforts to resolve disputes without resort to violence. Failing that, we must make those who would use violence to express their grievances know that they will pay a heavy price for their actions.

Secondly, realizing that despite diplomacy and threats of retaliation some individuals will still view terrorism as an acceptable means of expressing grievances, we must make every effort to understand the nature of the threat and direct our resources towards countering that threat. In reviewing specific actions in the security area, we must know the nature of the threat we are attempting to counter before we can pass on the propriety of the action contemplated. We must also be careful not to adopt short-term fixes which might make us feel good today but result in the long-term lessening of the goal we are trying to achieve.

Mr. Chairman, I look forward to working with you, the sponsors of the legislation, as well as those individuals who regrettably were thrown into this process against their will. I am confident that we will agree on measures to significantly enhance aviation security, thereby greatly lessening the possibility of another great tragedy.

Mr. Chairman, I think it is very appropriate that our first two witnesses, our distinguished colleagues Senators Lautenberg and D'Amato, are here. They have worked tirelessly on this issue. Both of them have been leaders in aviation issues for many years now, and I am very appreciative of the literally thousands of hours that they and their staff put in on the Pan Am 103 tragedy. They reflect great credit not only on this issue but on the entire Nation.

I thank you, Mr. Chairman.

Senator FORD. Thank you, Senator McCain.

I had my speech all worked out, and I lost it. I found out John found it.

I have an opening statement that Senator Hollings would like to have included in the record.

[The statement and bill follows:

OPENING STATEMENT BY THE CHAIRMAN

I am pleased that the Committee is holding this hearing on the aviation security problems that were tragically demonstrated by the bombing of Pan Am Flight 103 over Lockerbie, Scotland. None of us wants to see others go through the trauma, pain and suffering that those families have had to endure. Recent events in the Middle East remind us that anything is possible, and we must be prepared.

The examination of the Lockerbie incident has been a long and arduous one, for investigators, for legislators, and most of all for those parents, wives, husbands, brothers, sisters, sons and daughters who lost a part of their family on December 21, 1988. The family groups have pushed with great resolve and determination to get the government to act. I respect them for their dedication to creating something positive out of a disaster.

This past Sunday, the New York Times reran a letter to the editor from Susan Cohen, who lost her daughter Theo over Lockerbie. It was a painful recollection of the sense of love, loss, and ultimately frustration with the government that I am sure all of the families and friends had to endure. She also raises many questions about our government and the mistakes that were made. No government action can bring back her daughter, but we all must work to provide a system to prevent this kind of loss in the future.

The bill originally introduced, S. 2822, the Aviation Security Improvement Act of 1990, mirrored the recommendations of the Presidential Commission directed to look into aviation security. We have been working with all of the groups affected by this bill, and have tried to address their concerns with the legislation. Though there are differences between S. 2822 as introduced and the draft discussed today, we must work toward a consensus on what is needed.

There were many persons that asked to testify today, and I appreciate their efforts and concerns in achieving a better aviation security system. I assure these people and groups that we will look at their testimony carefully.

I look forward to hearing from the witnesses today.

101st CONGRESS
2d Session

S. 2822

To promote and strengthen aviation security, and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 28 (legislative day, June 11), 1990

Mr. Lautenberg (for himself, Mr. D'Amato and Mr. Mitchell) introduced the following bill; which was read twice and referred to the Committee on commerce, Science, and Transportation

---

A BILL

To promote and strengthen aviation security, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Aviation Security Improvement Act of 1990".

SEC. 2. FINDINGS.

The Congress finds that—

(1) ensuring the safety and security of passengers of United States air carriers against terrorist threats is

the responsibility of and should be given the highest priority by the United States Government;

(2) as detailed in the May 15, 1990, report of the President's Commission on Aviation Security and Terrorism, current aviation security systems are inadequate to provide such protection;

(3) the United States Government should take immediate steps to ensure fuller compliance with existing laws and regulations relating to aviation security;

(4) the United States Government should work through the International Civil Aviation Organization and directly with foreign governments to enhance aviation security on foreign-flag carriers and at foreign airports;

(5) the United States Government should ensure that enhanced security measures are fully implemented by both United States certificated and foreign-flag air carriers;

(6) at the upcoming meeting of the Summit Seven, the United States should call for the nations belonging to the Summit Seven to promptly amend the Bonn Declaration to extend sanctions for all terrorist acts, including attacks against airports and air carrier ticket offices;

(7) the United States Government should continue to rely upon bilateral negotiations to achieve aviation security objectives with foreign governments;

(8) the United States should have in place a mechanism by which the Government notifies the public, on a case by case basis and through the application of a uniform national standard, of certain credible threats to civil aviation security;

(9) the United States has a special obligation to the victims of acts of terrorism directed against this Nation, and it must assure that the Government provides prompt assistance to the families of such victims and that fair and prompt compensation be provided for such victims;

(10) the United States should work with other nations to treat as outlaws state sponsors of terrorism, isolating such sponsors politically, economically, and militarily;

(11) the United States must develop a clear understanding that state-sponsored terrorism threatens United States values and interests, and that active measures are needed to counter more effectively the terrorist threat; and

(12) the United States must have the national will to take every feasible action to prevent, counter, and respond to terrorist activities.

SEC. 3. ESTABLISHMENT OF POSITION OF ASSISTANT SECRETARY FOR TRANSPORTATION SECURITY AND INTELLIGENCE.

(a) ASSISTANT SECRETARY FOR TRANSPORTATION SECURITY AND INTELLIGENCE.—Subsection (e) of section 102 of title 49, United States Code, is amended by striking the number "4" in the first sentence and inserting in lieu thereof the number "5", and by inserting immediately after the first sentence the following: "There is an Assistant Secretary for Transportation Security and Intelligence, who shall be appointed by the President for a term of 5 years and shall not be removed except for cause."

(b) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Section 5315 of title 5, United States Code, is amended by adding at the end thereof "Assistant Secretary of Transportation for Transportation Security and Intelligence".

(c) FUNCTIONS.—The Assistant Secretary shall be responsible for those functions cited in section 4(a)(2) (A), (B), and (C), in addition to such functions as may be prescribed by the Secretary.

SEC. 4. TRANSFER OF AVIATION SECURITY FUNCTIONS.

Subsection (g) of section 106 of title 49, United States Code, is amended by striking the word "and" at the end of paragraph (1), renumbering paragraph (2) as paragraph (3), and inserting a new paragraph (2) to read as follows:

"(2) sections 315 and 316 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1356–1357) other than—

"(A) the receipt, assessment, and distribution of intelligence involving transportation security;

"(B) the development of transportation security policies, strategies, plans, and a comprehensive security program based on a systems planning approach; and

"(C) planning involving transportation security, including the coordination with other appropriate Federal agencies of countermeasures; and".

SEC. 5. ANNUAL AVIATION SECURITY REPORT; BUDGET.

(a) REPORT BY SECRETARY OF TRANSPORTATION.—Section 308 of title 49, United States Code, is amended by adding the following new subsection:

"Annual Report

"(f) The Secretary of Transportation shall submit an annual report concerning transportation security, together with such recommendations as desirable. This report shall not duplicate information required by sections 315(a) and

1115(c) of the Federal Aviation Act of 1958. The Secretary of Transportation shall submit a copy of such report to the appropriate committees of the Congress. The report may, as necessary, be in two parts, one being classified in nature and one being unclassified.

"(1) CONTENTS OF REPORT.—The report required by this subsection shall include, among other things, the following:

"(A) summary of activities by the Assistant Secretary for Transportation Security and Intelligence during the 12-month period preceding such report;

"(B) assessment of trends and developments in terrorist methods and other threats to civil air transportation;

"(C) recommendations for focus of research, engineering, and development activities relating to transportation security;

"(D) legislative and regulatory recommendations if appropriate;

"(E) funding and staffing requirements of the Assistant Secretary;

"(F) an assessment of the funding and staffing requirements, and attainment of existing staffing goals for the security functions remaining within the Federal Aviation Administration;

"(G) an identification of the scope and success of cooperative efforts with other Federal intelligence agencies;

"(H) evaluation of cooperation with foreign civil aviation authorities;

"(I) status of implementation of the recommendations of the President's Commission of Aviation Security and Terrorism and the 1987 Department of Transportation Safety Review Task Force; and

"(J) evaluation of the progress in implementation of changes identified as necessary in the review required in section 8(a) of the Aviation Security Improvement Act of 1990.".

(b) BUDGET.—The annual budget submission for the Department of Transportation shall include a specific request for the office of the Assistant Secretary for Transportation Security and Intelligence. In determining the budget request for the Assistant Secretary, the Secretary shall take into consideration the annual report required by section 308(f) of title 49, United States Code. The Secretary shall transmit to the Congress the budget requested by the Assistant Secretary.

SEC. 6. FEDERAL SECURITY MANAGERS.

The Federal Aviation Act of 1958 (49 App. U.S.C. 1301, et seq.) is amended by adding at the end thereof the following:

"FEDERAL SECURITY MANAGERS

"SEC. 319. (a)(1) The Administrator shall, within 90 days following the date of enactment of this provision, establish the position of Federal Security Manager (hereinafter referred to as 'manager'), and initiate placement of such managers at each high risk airport within the United States, and abroad.

"(2) A manager shall report directly to the Assistant Administrator for Civil Aviation Security.

"(3) In stationing managers, the Administrator shall give priority to category X airports, as defined by the Administrator, within the United States.

"(4) The responsibilities of a manager at an airport facility shall be subject to the Administrator's direction and authority and include, but not be limited to—

"(A) receipt of intelligence relating to aviation security;

"(B) in coordination with affected air carriers and airport facility operators, development of a comprehensive security plan for such facility;

"(C) oversight and enforcement of implementation by air carriers and airport operators of Federal security requirements, including the comprehensive plan described in subparagraph (B) of this paragraph;

"(D) requiring modifications in procedures, staffing, or other areas by air carriers or airport operators in order to ensure compliance with Federal security requirements and goals;

"(E) serving as a focal point for authority over matters relating to aviation security within a facility;

"(F) coordination of Federal activities relating to aviation security at that facility;

"(G) coordination with local law enforcement efforts relating to aviation security; and

"(H) coordinating, as appropriate, activities with those of Federal Security Managers at other airport facilities.

"(5) Managers at foreign airports shall also serve as the Assistant Administrator's liaison with foreign aviation security authorities with regard to implementation of Federal security requirements, and discharge their responsibility under paragraph (4)(A) consistent with the laws and requirements of host governments.

"Long-Term Implementation

"(b) The Administrator shall, within 180 days following the date of enactment of this subsection, prepare a plan to fully implement the requirements of this section. The plan shall include a schedule for implementation and an assessment of the personnel and funding needs required, and shall be submitted to the appropriate committees of Congress.".

SEC. 7. AIR CARRIER AND AIRPORT SECURITY PERSONNEL.

Section 316 of the Federal Aviation Act of 1958, as amended (49 App. U.S.C. 1357), is amended by adding at the end thereof the following:

"Employment Investigations

"(g)(1)(A) In order to ensure the security of aircraft and their passengers, crew, and cargo, the Administrator is authorized to require by regulation that specified categories of persons, as described in subparagraph (B) of this paragraph, be subjected to such initial and periodic employment investigations, including fingerprinting, as the Administrator determines to be appropriate.

"(B) The categories of persons who may be required by the Administrator to undergo employment investigations are those who are employed, or who occupy positions in which they may authorize others, to have unescorted access to air carrier or foreign air carrier aircraft or to secured areas of United States airports serving air carriers or foreign air carriers.

"(C) Any air carrier, foreign air carrier, or airport operator who employs persons described in subparagraph (B) of this paragraph, or authorizes or contracts for the services of such persons, shall take such actions as are necessary to assure that all employment investigations required by the Administrator are performed.

"Criminal History Records Check

"(2)(A) If the Administrator requires fingerprinting to conduct a criminal history records check, such fingerprints shall be submitted to the Attorney General of the United States, through a person or persons designated by the Administrator in consultation with the Attorney General, for identification and a criminal history records check. The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the employer. Notwithstanding any other provision of law, the Attorney General may provide, for the purposes of this subsection, all the results of the search to such person or persons as may be designated by the Administrator in consultation with the Attorney General.

"(B) For purposes of administering this subsection, the Administrator shall also prescribe regulations to—

"(i) implement procedures for the taking of fingerprints; and

"(ii) establish the conditions for use of information received from the Attorney General in order to limit the dissemination of such information, and assure that such information is used solely for the purposes of this subsection.

"(C) An individual subject to fingerprinting shall have the right to complete and correct the information contained in his or her criminal history records prior to any final employment decision being made on account of that information.

"Employment Restrictions

"(3)(A) Except as provided in subparagraph (B) of this paragraph, no air carrier, foreign air carrier, or airport operator shall employ, or authorize or contract for the services of, any person in duties for which an employment investigation is required by the Administrator either in the absence of such an investigation or if the results of such investigation include a conviction, in any jurisdiction, within the 10 years preceding the date on which such employment investigation is concluded for: any of the crimes set forth in subsections 902(b), (c), (h), (i), (j), (k), (l), (m), (n), (q), or (r) of this Act or in section 32 of title 18, United States Code; murder; assault with intent to murder; espionage; sedition; treason; kidnapping; unlawful possession, sale, distribution, or manufacture of an explosive or weapon; extortion; armed robbery; distribution of, or intent to distribute, a controlled substance; or conspiracy to commit any of the aforementioned criminal acts. The Administrator may specify other factors which he has determined warrant exclusion from access to such aircraft or secured areas.

"(B) It shall not be a violation of subparagraph (A) of this paragraph for an air carrier, foreign air carrier, or airport operator to employ, or authorize or contract for employment of, any person in duties that include unescorted access to air carrier or foreign air carrier aircraft, or secured areas of United States airports serving air carriers or foreign air carriers, a person with respect to whom an investigation under this subsection has not been conducted, if such access is carried out pursuant to a plan approved by the Administrator which provides alternate security arrangements.

"Recovery of Costs

"(4) The Administrator and the Attorney General shall establish reasonable fees and charges to recover the United States costs in administering this subsection, and shall proportionately credit to the appropriations affected any moneys collected under this subsection.

"Employment Standards

"(h) The Administrator shall, within 270 days from the date of enactment of this subsection, prescribe standards for the hiring and continued employment of air carrier, airport, and contract security personnel. Such standards shall include, but are not limited to—

"(1) minimum training requirements for new employees;

"(2) minimum education levels for employees, as appropriate;

"(3) periodic retraining for employees;

"(4) requirements for minimum staffing levels, as appropriate; and

"(5) minimum foreign language skills, as appropriate.

"Human Factors

"(i) The Administrator, in coordination with air carriers, airport operators, the Secretary of Labor, and others as appropriate, shall review issues relating to human performance within the aviation security system, with the goal of maximizing such performance. Not later than 270 days after the date of enactment of this subsection, the Administrator shall recommend guidelines and prescribe appropriate changes to existing procedures to improve human performance.

"Training for Air Carrier and Airport Security Personnel

"(j) Within 180 days following the date of enactment of this subsection, the Administrator shall prescribe standards for the education and training of—

"(1) ground security coordinators;

"(2) security supervisory personnel; and

"(3) airline pilots as in-flight security coordinators.

The education and training programs required shall include but not be limited to (A) initial education and training and (B) regular, periodic retraining and continuing education. The Administrator shall prescribe standards against which persons described in paragraphs (1) and (2) of this subsection shall be measured annually.".

SEC. 8. DOMESTIC AIRPORT SECURITY.

(a) SURVEY OF DOMESTIC SECURITY.—In coordination with the Federal Bureau of Investigation, the Administrator of the Federal Aviation Administration shall conduct an assessment of the current and potential threats to the domestic air transportation system. Such assessment shall include, but not be limited to, consideration of—

(1) the extent to which there are persons with the capability and intent to carry out terrorist or related unlawful acts against the domestic aviation system and the likely methods that such persons might utilize;

(2) the adequacy of security procedures relative to the handling and transport of checked baggage;

(3) space requirements for security personnel and equipment;

(4) separation of passengers, baggage, cargo, and mail from baggage, cargo and mail to be screened;

(5) separation of controlled and uncontrolled areas of airport facilities;

(6) coordination of the activities of security personnel of the United States Customs Service, Immigration and Naturalization Service, Federal Aviation Administration, air carriers, and other law enforcement personnel; and

(7) the vulnerability of individual airports within the United States to terrorist activity.

(b) REPORT TO CONGRESS.—The Secretary of Transportation shall, not later than 1 year after the date of enactment of this Act, and annually thereafter, submit to Congress the results of this assessment.

(c) SURVEY.—In developing airport construction standards under section 612(d) of the Federal Aviation Act of 1958, the Administrator shall take into consideration the results of the assessment of domestic airport security conducted under subsection (a) of this section.

SEC. 9. RESEARCH AND DEVELOPMENT.

Section 316 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1351) is amended by redesignating subsections (d)(1) and (d)(2) as (d)(1)(A) and (d)(1)(B), respectively, and by adding the following new paragraphs:

"Accelerated Program

"(2)(A) The Administrator shall establish and carry out a program to accelerate and expand the research, development, and implementation of technologies and procedures to counteract terrorist acts against civil aviation.

"(B) Within 180 days of the date of enactment of this paragraph, the Administrator, in consultation with the Scientific Advisory Board established under this section, shall complete an intensive review of the threats to civil aviation, with particular focus on—

"(i) the explosive materials presenting the most significant threat to civil aircraft;

"(ii) the minimum amounts, configurations, and types of explosive material that can cause catastrophic damage to the commercial aircraft now in service and expected to be in service over the next 10 years following the date of the enactment of this paragraph;

"(iii) the amounts, configurations, and types of explosive material that can reliably be detected by existing or reasonably anticipated, near-term explosive detection technologies;

"(iv) the feasibility of employing various methods to minimize the damage that could be caused by explosive materials which cannot be reliably detected by existing or anticipated near-term explosive detection technologies;

"(v) the ability to screen such different entities as passengers, carry-on baggage, checked baggage, mail, and cargo; and

"(vi) the technologies that might be utilized in the future to attempt to destroy or otherwise threaten commercial aircraft and the methods by which such technologies can be effectively countered.

"(C) The results of such review shall be used by the Administrator in developing the focus and priorities of the program specified in paragraph (2)(A).

"(D) In designing and implementing the program, the Administrator shall—

"(i) consult and coordinate with other Federal agencies conducting similar research;

"(ii) identify those agencies that would benefit from such research; and

"(iii) seek cost-sharing agreement with those agencies that would benefit from such research.

"Goal

"(3) It shall be the goal of the accelerated program to develop and have in place within 60 months following the date of the enactment of this paragraph such new equipment and procedures as are needed to meet the technological challenges presented by terrorism.

"Human Factors

"(4) The program established by the Administrator under this section shall include research and development of both technological improvements and ways to enhance human performance.

"Grants and Cooperative Agreements

"(5) From the amounts appropriated for each fiscal year pursuant to the authorization under paragraph (8) of this subsection, the Administrator shall make available amounts, by way of grants, to colleges, universities, and other appropriate research institutions and facilities with demonstrated ability to conduct research authorized under this section. Such grants may be in such amounts, and subject to such terms and conditions, as the Administrator may prescribe. The Administrator may also enter into such cooperative agreements with other governmental entities such as he determines appropriate.

"Review

"(6) In the administration of the program specified in paragraph (2)(A) of this subsection, the Administrator shall review and consider the annual reports of the Secretary of Transportation submitted to the Congress on transportation security and intelligence.

"Scientific Advisory Board

"(7) The Administrator shall establish a Scientific Advisory Board for the purpose of reviewing, commenting on, and advising the Administrator on the progress of and any needed modifications to the program authorized in paragraph (2) of this subsection. The Board shall consist of persons with expertise in explosive detection, representing—

"(A) Federal research facilities;

"(B) educational institutions;

"(C) the National Academy of Sciences;

"(D) the Office of Technology Assessment;

"(E) private industry; and

"(F) others, as deemed appropriate by the Administrator.

"Authorizations

"(8) Upon the completion of the review required in paragraph (2)(B) of this subsection, there are authorized to be appropriated, from the Airport and Airway Trust Fund, for the purpose of carrying out the grant program contained in paragraph (5), such sums as may be necessary.".

SEC. 10. ASSISTANT ADMINISTRATOR FOR CIVIL AVIATION SECURITY.

The Federal Aviation Act of 1958 (49 App. U.S.C. 1301, et seq.) is amended by adding at the end thereof the following:

“CIVIL AVIATION SECURITY

“SEC. 318. (a) There is established within the Federal Aviation Administration the position of Assistant Administrator for Civil Aviation Security.

“Reporting

“(b) The Assistant Administrator for Civil Aviation Security shall report directly to the Administrator of the Federal Aviation Administration, and shall be subject to the Administrator’s direction and authority.

“Responsibilities

“(c) The responsibilities of the Assistant Administrator for Civil Aviation Security shall include—

“(1) day-to-day management of and operational guidance to field security resources, including Federal Security Managers;

“(2) enforcement of security-related requirements;

“(3) oversight of research and development of security-related projects;

“(4) inspections of security systems;

“(5) reporting to the Assistant Secretary of Transportation for Transportation Security such information as necessary to allow the Assistant Secretary to fulfill assigned responsibilities; and

“(6) such other functions as deemed necessary and appropriate by the Administrator.”.

SEC. 11. DEPLOYMENT OF EXPLOSIVE DETECTION EQUIPMENT.

The Federal Aviation Act of 1958, as amended (49 App. U.S.C. 1301, et seq.), is amended by adding at the end thereof the following:

"DEPLOYMENT OF EXPLOSIVE DETECTION EQUIPMENT

"SEC. 320. No further deployment or purchase of any explosive detection equipment pursuant to sections 108.7(b)(8) and 108.20 of title 14 of the Code of Federal Regulations, or any similar rule, shall be required, unless the Administrator certifies that, based on the results of tests conducted pursuant to independently developed protocols reviewed and approved by the Scientific Advisory Board established pursuant to section 316 of this Act, such equipment can reliably detect the minimum amounts, configurations, and types of explosive material that can cause catastrophic damage to commercial aircraft of 60 or more passenger seats.".

SEC. 12. THREATS TO CIVIL AVIATION; PUBLIC NOTIFICATION.

The Federal Aviation Act of 1958 (49 App. U.S.C. 1301, et. seq.) is amended by adding at the end thereof the following:

"REPORTING OF THREATS TO CIVIL AVIATION

"SEC. 321. (a) Any air carrier, airport operator, travel agent, or person employed, directly or through contractual agreement, by such an entity, receiving information, other than through a communication directed by the Federal Government, of a threat to civil aviation, shall immediately provide that information to—

"(1) an official of the Federal Aviation Administration as designated by the Administrator;

"(2) the Assistant Secretary of Transportation for Transportation Security and Intelligence; or

"(3) other appropriate officials, as specified by the Administrator.

"Flight Cancellation

"(b) In the event that a determination is made that a threat to civil aviation cannot be addressed in a manner adequate to ensure, to the maximum extent feasible, the safety of the passengers and crew of a particular flight or series of flights, the Administrator shall order such flight or series of flights to be cancelled.

"Guidelines for Public Notification

"(c) The Administrator shall, in coordination with the Secretary of State and Attorney General of the United States, develop guidelines for issuing notification to the public of threats to civil aviation.

"Responsibilities

"(d)(1) The guidelines developed pursuant to (c) shall identify officials responsible for—

"(A) determining, on a case-by-case basis, if public notification of a threat should be made;

"(B) ensuring that public notification, when deemed appropriate, is made in a timely and effective manner, including through the use of a toll-free telephone number; and

"(C) cancelling the departure of a flight or series of flights pursuant to subsection (b).

"(2) Such public notification shall—

"(A) in the case of a threat to domestic aviation, be made by the Attorney General; and

"(B) in the case of a threat to aviation abroad, be made by the Secretary of State.

"Criteria

"(e) The guidelines required pursuant to subsection (c) shall provide for the consideration of—

"(1) the specificity of the threat;

"(2) the credibility of intelligence related to the threat;

"(3) the ability to effectively counter the threat;

"(4) the protection of intelligence sources and methods;

"(5) cancellation, by the air carrier or by the Administrator, of a flight or series of flights in lieu of public notification;

"(6) the ability of passengers and crew to take steps to reduce the risk to their safety as a result of any notification; and

"(7) other factors deemed appropriate by the Administrator.

"Distribution

"(f) The guidelines shall be distributed for use by appropriate officials of the Department of Transportation, Department of State, and Department of Justice.

"Selective Notification

"(g) In no event shall there be notification of a threat to civil aviation to only selective potential travelers unless that threat applies only to them.

"Access to Information

"(h) In conjunction with the Secretary of State, Attorney General of the United States, intelligence agencies, law enforcement officials, and others involved in the collection and analysis of intelligence relating to aviation security, the Administrator shall develop procedures to minimize the number of persons having access to aviation threat information. Any restrictions adopted pursuant to this subsection shall not diminish the ability of the Federal Government to effectively discharge its responsibilities relating to aviation security.".

SEC. 13. SCREENING OF MAIL AND CARGO.

The Federal Aviation Act of 1958 (49 App. U.S.C. 1301, et seq.) is amended by adding at the end thereof the following:

"DEFINITION OF MAIL

"SEC. 322. (a) Not later than 180 days after the date of enactment of this section, the Postmaster General of the United States shall by regulation modify the definition of mail 'sealed against inspection', to preclude from such classification items capable of containing explosive materials that can cause catastrophic damage to commercial aircraft.

"Screening Criteria

"(b) The Postmaster General of the United States shall by regulation permit the screening by air carriers of mail not sealed against inspection as required by the Administrator.

"Regulation

"(c) The Administrator shall require the screening of mail and cargo, except as prohibited under any international treaty or convention, by air carriers or their agents prior to the transport of such materials. In developing such requirements, the Administrator shall consider, among other things—

"(1) existing and reasonably anticipated explosive detection technologies capable of screening mail and cargo;

"(2) the compatibility of screening procedures for mail and cargo with procedures for checked baggage;

"(3) the variation in threat presented by mail and cargo from various locations;

"(4) the use of inspection procedures specific to mail and cargo;

"(5) the protection, to the extent possible, of the privacy of the senders and recipients of mail;

"(6) precise detection of explosive materials that can cause catastrophic damage to commercial aircraft; and

"(7) the desirability of not unduly delaying the delivery of mail or cargo.

The Administrator may provide for the phasing in of requirements for screening of mail and cargo by air carriers.".

SEC. 14. AIRPORT CONSTRUCTION STANDARDS.

Section 612 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1432) is amended by adding at the end thereof the following:

"Airport Construction Standards

"(d) The Administrator, in consultation with airport authorities, air carriers, and such others as the Administrator deems appropriate, shall develop model standards for airport design and construction to allow for maximum security enhancement.".

SEC. 15. CIVIL PENALTIES.

Section 901(a) of the Federal Aviation Act of 1958 (499 pp. 1471(a)) is amended by designating the existing text of paragraph (2) as paragraph (2)(A), and inserting immediately after such paragraph the following:

"(B)(i) Whenever the Administrator has reason to believe that a violation by an air carrier or airport operator of this Act, or any rule, regulation or order issued pursuant thereto, involving security contributed to the loss of life or serious injury of a person, the Administrator may impose a civil penalty for such violation in an amount not to exceed 3 times the amount which could have otherwise been imposed for such violation under paragraph (1) of this subsection.

"(ii) A determination by the Administrator that there is 'reason to believe' shall be based on investigative results of the Federal Aviation Administration, Department of Transportation, National Transportation Safety Board, parallel foreign investigative entities, or law enforcement officials.".

SEC. 16. DEPARTMENT OF STATE REPORT.

The Secretary shall report, not later than one year after the date of enactment of this Act, and annually thereafter, to the Congress on the status of efforts to implement the recommendations of the President's Commission on Aviation Security and Terrorism.

SEC. 17. NEGOTIATIONS WITH FOREIGN GOVERNMENTS.

(a) Initiation of Negotiations.—The President is requested within 180 days following the date of enactment of this section, to initiate negotiations, or the processes leading to negotiations, with foreign governments relative to improving civil aviation security.

(b) Negotiations.—Such negotiations should include the subjects of—

(1) enhanced standards for security at airports and other areas related to transportation;

(2) enhanced cooperation among nations on civil aviation and other transportation security matters; and

(3) the ability of United States air carriers operating at foreign airports to implement at those airports security requirements imposed by the United States Government.

(c) Cooperation.—In initiating the negotiations described in subsections (a) and (b), the President is encouraged to work through existing organizations, such as the International Civil Aviation Organization, as well as directly with foreign governments.

SEC. 18. UNITED STATES GOVERNMENT COMPENSATION FOR VICTIMS OF TERRORISM.

(a) Compensation.—The President shall submit to the Congress, not later than one year after the date of the enactment of this Act, a legislative proposal to authorize the

United States to provide fair and prompt compensation, which may include, but not be limited to, monetary benefits or limited relief from Federal taxation, to United States citizens who are victims of terrorism including terrorist incidents which occurred on or after December 21, 1988.

(b) BOARD.—The President may establish a board to develop criteria for compensation and to recommend changes to existing laws to establish a single comprehensive approach to victim compensation for terrorist acts.

SEC. 19. PASSENGER MANIFEST.

(a) MANDATORY AVAILABILITY OF PASSENGER MANIFEST.—The Federal Aviation Act of 1958 is amended by adding at the end thereof the following:

"PASSENGER MANIFEST

"SEC. 323. (a) Not later than 60 days after the date of the enactment of this subsection, the Administrator shall require all air carriers, including foreign air carriers, to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State not more than one hour after any such carrier is notified of an aviation disaster outside the United States which involves such flight.

"Information

"(b) For purposes of this section a passenger manifest should include the following information:

"(1) the full name of each passenger;

"(2) the passport number of each passenger, if required for travel; and

"(3) the name and telephone number of an emergency contact for each passenger.".

(b) IMPLEMENTATION.—In implementing the requirement under the amendment under subsection (a) of this section, the Administrator shall—

(1) require United States carriers to collect passenger manifest information as a condition for passenger boarding of any flight subject to such requirement; and

(2) restrict United States landing rights to foreign carriers that implement a requirement comparable to that imposed pursuant to subsection (a).

(c) INFORMATION FROM UNITED STATES PASSPORTS.—The Secretary of State, in coordination with the Director of the Immigration and Naturalization Service, shall take such steps as necessary to ensure the installation and use of passport reading machines at international gateway airports. Notwithstanding any other provision of law, for any fiscal year and in amounts determined by the Secretary of State, passport fees collected by the Department of State may be credited to a Department of State account and may be available without fiscal year limitation. Amounts credited to that account shall be available only for the purchase and installation of machines able to read United States passports and facilitate the collection of data for the purposes of section 323 of the Federal Aviation Act of 1958.

SEC. 20. DEPARTMENT OF STATE NOTIFICATION OF FAMILIES OF VICTIMS.

(a) Department of State Policy.—It is the policy of the Department of State pursuant to section 43 of the State Department Basic Authorities Act to directly and promptly notify the families of victims of aviation disasters abroad concerning citizens of the United States directly affected by such a disaster, including timely written notice. The Secretary of State shall ensure that such notification by the Department of State is carried out notwithstanding notification by any other person.

(b) Department of State Guidelines.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall issue such regulations, guidelines, and circulars as are necessary to ensure that the policy under subsection (a) is fully implemented.

SEC. 21. DESIGNATION OF STATE DEPARTMENT-FAMILY LIAISON AND TOLL-FREE FAMILY COMMUNICATIONS SYSTEM.

(a) Designation of State Department-Family Liaison.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall issue such rules and guidelines as are necessary to provide that in the event of an aviation disaster involving United States citizens abroad, if possible, the Department of State will assign a specific individual, and an alternate, to each family of such a citizen as the Department of State liaison.

(b) TOLL-FREE COMMUNICATIONS SYSTEM.—In the establishment of the Department of State toll-free communications system to facilitate inquiries concerning the affect of any disaster abroad on United States citizens residing or traveling abroad, the Secretary of State shall ensure that a toll-free telephone number is reserved for the exclusive use of the families of citizens who have been determined to be involved in any such disaster.

SEC. 22. DISASTER TRAINING FOR STATE DEPARTMENT PERSONNEL.

(a) ADDITIONAL TRAINING.—The Secretary of State shall institute a supplemental program of training in disaster management for all consular officers.

(b) TRAINING IMPROVEMENTS.—

(1) In expanding the training program under subsection (a), the Secretary of State shall consult with death and bereavement counselors concerning the particular demands posed by aviation tragedies and terrorist activities.

(2) In providing such additional training under subsection (a) the Secretary of State shall consider supplementing the current training program through—

(A) providing specialized training to create a team of "disaster specialists" to deploy immediately in a crisis; or

(B) securing outside experts to be brought in during the initial phases to assist consular personnel.

SEC. 23. DEPARTMENT OF STATE RESPONSIBILITIES AND PROCEDURES AT INTERNATIONAL DISASTER SITE.

(a) DISPATCH OF SENIOR STATE DEPARTMENT OFFICIAL TO SITE.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall issue such rules and guidelines as are necessary to provide that in the event of a major aviation disaster involving United States citizens abroad not less than one senior officer from the Bureau of Consular Affairs of the Department of State shall be dispatched to the site of such disaster.

(b) CRITERIA FOR DEPARTMENT OF STATE STAFFING AT DISASTER SITE.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall promulgate criteria for Department of State staffing of disaster sites. Such criteria shall define responsibility for staffing decisions and shall consider the deployment of crisis teams under subsection (d). The Secretary of State shall promptly issue such rules and guidelines as are necessary to implement criteria developed pursuant to this subsection.

(c) STATE DEPARTMENT OMBUDSMAN.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall issue such rules and guidelines as are necessary to provide that in the event of an aviation disaster involving United States citizens abroad not less than one officer or employee of the Department of State shall be dispatched to the disaster site to provide on-site assistance to families who may visit the site and to act as an ombudsman in matters involving the foreign local government authorities and social service agencies.

(d) CRISIS TEAMS.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall promulgate procedures for the deployment of a "crisis team" which may include public affairs, forensic, and bereavement experts to the site of any disaster involving United States citizens abroad to augment in-country embassy and consulate staff. The Secretary of State shall promptly issue such rules and guidelines as are necessary to implement procedures developed pursuant to this subsection.

SEC. 24. RECOVERY AND DISPOSITION OF REMAINS AND PERSONAL EFFECTS.

It is the policy of the Department of State (pursuant to section 43 of the State Department Basic Authorities Act) to provide liaison with foreign governments and persons and with United States air carriers concerning arrangements for the preparation and transport to the United States of the remains of citizens who die abroad, as well as the disposition of personal effects. The Secretary of State shall ensure that regulations and guidelines of the Department of State reflect such policy and that such assistance is rendered to the families of United States citizens who are killed in terrorist incidents and disasters abroad.

SEC. 25. ASSESSMENT OF LOCKERBIE EXPERIENCE.

The Secretary of State shall compile an assessment of the Pan American Airways Flight 103 aviation disaster over Lockerbie, Scotland on December 21, 1988, and the Department of State response, together with guidelines for future Department of State responses to comparable disasters, for general distribution to all embassy and consular posts abroad.

SEC. 26. OFFICIAL DEPARTMENT OF STATE RECOGNITION.

Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall promulgate guidelines for appropriate ceremonies or other official expressions of respect and support for the families of United States citizens who are killed through acts of terrorism abroad.

SEC. 27. OVERSEAS SECURITY ELECTRONIC BULLETIN BOARD.

Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall issue such rules and regulations as may be necessary to establish, under the Bureau of Consular Affairs, an electronic bulletin board assessable to the general public. Such bulletin board shall contain all information, updated daily, which is available on the Overseas Security Electronic Bulletin Board of the Bureau of Diplomatic Security.

SEC. 28. COORDINATOR FOR INTERNATIONAL AVIATION SECURITY.

There is established within the Department of State the position of Coordinator for International Aviation Security. The Coordinator shall be appointed by the President, with the advice and consent of the Senate, and shall have the rank of ambassador.

SEC. 29. INTERNATIONAL NEGOTIATIONS CONCERNING AVIATION SECURITY.

(a) UNITED STATES POLICY.—It is the policy of the United States—

(1) to seek bilateral agreements to achieve United States aviation security objectives with foreign governments;

(2) to continue to press vigorously for security improvements through the Foreign Airport Security Act and the foreign airport assessment program; and

(3) to continue to work through the International Civil Aviation Organization to improve aviation security internationally.

(b) NEGOTIATIONS F[illegible] AVIATION SECURITY.—It is the policy of the United States that the Department of State, in consultation with the Department of Transportation, shall be responsible for negotiating requisite aviation security agreements with foreign governments concerning the implementation of United States rules and regulations which affect the foreign operations of United States air carriers, foreign air carriers, and foreign airports.

(c) SPECIFIC EXCEPTION.—In any case in which, and to the extent that, a rule or regulation cannot be implemented without the cooperation and approval of a foreign government, such rule or regulation shall not apply to the applicable foreign operations of United States air carriers, foreign air carriers, and foreign airports.

SEC. 30. EFFECTIVE DATES.

This Act shall take effect on the date of enactment, except that the provisions of section 4(a) shall take effect upon the date of expiration of the 180-day period following the date of the enactment of this Act. A person performing functions referred to in section 4(a)(2) (A), (B), and (C) on the date of the enactment of this Act shall continue to perform such functions as directed by the Federal Aviation Administrator or the Secretary of Transportation.

○

Senator FORD. We are delighted to have both of you.

Senator Lautenberg, if you would proceed we will be delighted to hear your testimony, and then we will hear

STATEMENT OF HON. FRANK LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Thank you very much, Mr. Chairman. You and our colleague, Senator McCain have shown a great deal of interest in aviation. You, Mr. Chairman, from the standpoint of legislative overview, have had a lot of interest in making sure that we have an efficient working system and Senator McCain, whose experience in aviation is second to none in this body, has that same commitment.

Certainly it is fitting that we go from the question of efficiency and service to that of security which has obviously been sorely neglected. Today we are discussing not only making the system work better but also making it safer.

I appreciate the fact that you are holding this hearing and that I have a chance, Mr. Chairman, to testify before the subcommittee. It is important that we move this legislation and the committee's action today. Is an essential forward step in that direction.

As I look around, I see several members of the families of the victims of the bombing of Pan Am 103. Over the last 20 months, I have gotten to know many of them. I have seen their courage and their determination to make certain that other families, other friends, other loved ones do not have to witness the kind of tragedy that they have experienced.

They deserve our commendation and our thanks for their dogged persistence. They have suffered a loss that can never be made up, but their goal is to prevent others from suffering the same agony. Their presence reminds us of how important this issue is. When we look at the situation today in the Middle East, we see another reminder that improving aviation security is as important, perhaps even more important today, than it was the day after the 270 innocent victims lost their lives in the community of Lockerbie.

Right now, the world's attention is focused on the Persian Gulf area. Saddam Hussein is welcoming, perhaps even harboring, terrorists in Baghdad. It is a startling reminder that some still prefer to use violence against innocent people as a means of accomplishing their goals. As long as they feel that way, we have to stand our guard and fight back whenever we can. The terrorists are not giving up, and we should never give up.

My distinguished colleague from across the river in New York and I served on the President's Commission on Aviation, Security and Terrorism. We spent a great deal of time looking at this issue. The commission conducted a comprehensive review of our aviation security system. We found shortcomings in virtually all areas, from intelligence to research and development, to international agreements. The commission made 64 recommendations to address those shortcomings. The bill that you are considering today embodies those recommendations.

Perhaps our most troubling finding was that the bombing of Pan Am 103 may well have been prevented. We can never provide an ironclad guarantee against terrorism, but we can make it more and more difficult for terrorists to succeed. That is what our security system is supposed to do. But that is not what it did in Frankfurt, Germany and Heathrow with Pan Am. There were gaping holes through the system, and through one of those holes slipped a bomb that killed 270 innocent people.

Mr. Chairman, things need to change. This bill can serve as a mechanism for that change. Many of the needed changes are very basic in nature. The common thread connecting all the problems we on the Commission found was lack of focus on this specific problem and a lack of accountability for aviation security responsibility.

Aviation security cannot continue to be put on the back burner, as it clearly was at the time of the Pan Am 103 tragedy. It cannot be buried within the bureaucracy isolated from the decision-makers. It has to be elevated and placed under the jurisdiction of the Secretary and his top staff. The accountability is crucial. It means knowing who is making the decisions and who is giving the orders. Moreover, it means knowing that the decisions are being made and the orders are being given. This accountability was sorely lacking from the system the commission reviewed.

Secretary Skinner has made important changes in his department. He has given security a higher priority, and I commend him for that. We cannot, however, just assume that his focus will be shared by his successor, whoever that may be and whenever he or she might take office.

Because of that, I think it is essential that the legislation build in the focus and accountability that is needed on a permanent basis. There is also a need for better planning. There has been little strategic thinking designed to keep us up to date with terrorists. At a time when bombings are the method of choice for a terrorist, the security program is still designed to prevent hijackings.

The bill addresses this lack of planning in several ways. The Secretary or his designee is given the responsibility for developing security policies and strategies, including coordination with other Federal agencies involved in security. Another example of building in the requirements for planning and foresight is the research and development program authorized in this bill.

For fiscal year 1991, the transportation appropriations bill the Senate passed increases funding for security R&D programs to more than twice last year's level. S. 2822 would put in place an R&D program designed to catch up to and even stay ahead of the terrorists.

Mr. Chairman, I believe the legislation we are considering addresses these problem areas in a responsible and effective manner. By placing the responsibility for security in the upper echelons of the DOT and the FAA, you would help ensure that there is a focus on this problem, and importantly, it would build in the accountability that is so seriously and sorely needed.

By placing Federal security managers at high risk airports we would make sure that the other participants in our security system—the airports and the airlines—are doing what they are supposed to do and are held accountable for their actions.

Issuing Government orders and regulations without a real effort to enforce them is unacceptable. Period paper checks do not do the job. An on-the-scene security manager overseeing the airports and the carriers and working with them to enhance security would go a long way toward better protecting the flying public.

Mr. Chairman, there are other areas that this bill addresses that are essential to improving our Government's response to aviation terrorism, and I would like to cite just a couple. Right now, there are essentially no employment or training standards for security personnel. Our bill would require them.

The bill also makes a number of important changes in the way the State Department responds to American citizens in times of tragedy. The inept and heartless treatment that the families of Pan Am 103 victims received was a disgrace. This bill would help make sure that our Government responds in a more prompt and humane way after the tragedies that we may face in the future.

There is something else that should be in this bill, and I refer to it as a so-called level playing field. When the FAA imposes requirements on U.S. carriers, it does so with a belief that those requirements are necessary to best protect American travelers. A great number—as many as half—of the U.S. citizens traveling abroad do so on foreign flag carriers. These citizens, American citizens, deserve no less protection than Americans flying on our carriers. Security requirements should be imposed equally on all airlines carrying American citizens and leaving and entering our country.

Finally, there is something that goes beyond any legislative effort. Ultimately, the United States has to have the national will to battle terrorism. We have got to make it clear to terrorists that they are going to be punished for their acts, and we are going to go get them if we can possibly do that.

We should not negotiate on equal terms with terrorists, or with nations that sponsor terrorism, and our Government must work with others to isolate and cut off terrorists from their support. As long as the civilized nations of the world look the other way, they are condoning terrorism and they are going to continue to be victimized by it.

Mr. Chairman, we all know that the time remaining in this Congress is growing short. The House has passed, as you mentioned, the companion version of this bill and sent it over here. I appreciate the support and encouragement you have given to this subject, and urge you and the members of the Committee to do everything possible to see that this legislation is enacted before we adjourn for the year, and I thank you very much, Mr. Chairman and members of the committee.

Senator FORD. The Senator makes a good point, and I appreciate his testimony. Senator D'Amato?

STATEMENT OF HON. ALFONSE M. D'AMATO, U.S. SENATOR FROM NEW YORK

Senator D'AMATO. Thank you very much, Mr. Chairman, and I thank you for giving me the opportunity to testify, along with Senator Lautenberg, on this bill, and for calling this hearing as late as it is in the session, and as much as Senator Lautenberg, Mr. Chairman, has touched on so much of what I would have said.

Because so much of what was done comes as a result of the exhaustive hearings that we had, and to be quite frank, the testimony—they are very factual—given by the families as to what they observed and what took place, their treatment, it really forms a good basis upon which the presidential Commission made its recommendations.

The bombing of Pan Am 103 nearly 22 months ago shocked our Nation into awareness that American travelers were not adequately protected from wanton acts of terrorism. The presidential bipartisan Commission recommended concrete steps to be taken now to improve aviation security.

In light of the crisis in the Middle East, the threat of terrorist attacks upon American targets is obviously very high, and so on June 28, Senator Lautenberg and I introduced the Aviation Security Improvement Act of 1990, S. 2822. On October 1, the House passed H.R. 5732, a similar companion bill. I hope, Mr. Chairman, we will be able to act quickly to reconcile the differences between the two bills and send the bill to the President for his signature.

Since S. 2822 was introduced there has been a great deal of discussion of its provisions among legislators, interest groups, and the executive branch. Certainly, there are different points of view on many issues; however, I believe it would be a disservice to the public to reject or alter substantially the Commission's recommendations on major issues.

Now, in the course of evaluating our aviation security system, the Commission was shocked at the FAA's performance level, at the structural weaknesses which were made apparent by that investigation. To be quite candid, we were appalled at the handling of threat information and the lack of a system for public notification of public threats. Moreover, we were shocked by the State Department's performance, which, rather than lending a helping hand in certain instances added insult to the terrible, tragic loss.

Now, the Commission made a number of recommendations, and I am just going to touch on some of them. First, we called for the elevation of the security function at the FAA and at the Department of Transportation. I think it is important to understand that the precise manner in which this implementation is brought about is not critical. What is critical is the building of accountability for security functions at the FAA and the Department of Transportation.

Second, we called for the creation of Federal security managers at high risk domestic and foreign airports. That is critical. I do not believe that should be compromised, Mr. Chairman, and I know that there are those who would simply push this aside. In our studies, in our travels, in our reports, in our recommendations, particularly at foreign airports, we find that this is disjointed, and to continue it as is, or as it is taking place now, would be a disservice to the public.

Third, we pointed out the need for a mechanism for public notice of credible threats, and we are not talking about all the threats that pile in, but credible threats. If some people have the right to know—and we are not talking about just those in the intelligence agencies, et cetera, but if we have a situation where there are numbers of people who are given advance warning and others are left out, that is absolutely not conscionable. That is a double standard.

Fourth, we outlined a series of changes at the State Department to provide more sensitive and compassionate treatment of victims, and I believe they are already in process attempting to deal with this, and I must say, I think that Secretary Skinner is making a very conscious effort to implement a number of the recommendations that are contained in the legislation.

Mr. Chairman, I know that with your support and the support of this committee that the differences that exist as it relates to our bill, as it relates to the thoughts that the committee and staff have been working on and the legislation passed by the House, can be reconciled, and together we can reach an accommodation with the administration and produce a bill that can become law, and can provide better protection for the U.S. citizens, and let people know that we do care.

I thank the Chair and I thank the committee.

Senator FORD. Thank you, Senator. We appreciate your coming. We appreciate all your hard work, and we appreciate your testimony this morning.

We have been joined by the senior Senator from Alaska, Senator Stevens.

Do you have a statement this morning, Ted, you would like to give?

Senator STEVENS. No, thank you, Mr. Chairman.

Senator FORD. We are very pleased to have two people here this morning, and I will ask them both to come to the witness STAND. Admiral James B. Busey, Administrator, Federal Aviation Administration; and Ambassador Morris D. Busby, Coordinator for Counter-Terrorism of the Department of State.

I hope you gentlemen do not mind being at the same table.

We want to get to the panel of the family and victims of Flight 103 and give them an opportunity to speak.

Admiral, would you proceed. Would both you gentlemen acknowledge those who have joined you at the table for the hearing record.

Admiral BUSEY. Yes, Mr. Chairman. With me this morning is Vice Admiral Clyde Robbins, United States Coast Guard, who is on the Secretary's staff. I will have more to say about his role in just a few moments.

Ambassador.

Ambassador BUSBY. Mr. Chairman, I am accompanied this morning by Mr. Carmen DiPlacido, who is the Director of Citizen Consular Services at the Bureau of Consular Affairs.

Senator FORD. Thank you.

STATEMENT OF HON. JAMES B. BUSEY, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION; ACCOMPANIED BY VICE ADM. CLYDE ROBBINS, UNITED STATES COAST GUARD

Admiral BUSEY. Yes, sir, Mr. Chairman. I will summarize my statement and ask that the full statement be submitted.

Senator FORD. Without objection, your full statement will be included in the record.

Admiral BUSEY. We appreciate the opportunity to appear before the committee today to testify concerning S. 2822, which is intended to implement the recommendations of the President's Commission on Aviation Security and Terrorism. We view in the Department of Transportation the recommendations of the report of the President's Commission on Aviation, Security and Terrorism as a significant contribution to our ongoing efforts to enhance the security of the traveling public.

Since the issuance of the report, we have acted promptly to make key changes in security practices. In fact, about two-thirds of the recommendations are already being acted upon and in place by the administration. Both Secretary Skinner and I have spent considerable time personally along with our senior staffs putting in place the needed changes and insuring that the commission's report has been objectively and fully reviewed.

Because of the serious response that is under way, the administration continues to believe that legislative efforts are not necessary at this time. The President's Commission recognized in its report that some of its recommendations were far reaching and represented a dramatic shift in the government's traditional approach to civil aviation security. To that end the commission recommending, quoting, "the Secretary of Transportation and the Secretary of State be directed to report to the President, the Congress, and the American people in 1 year on actions taken in conjunction with this commission's report and the results of those actions."

Today, we have had less than 5 months to fully address the report. Many of the commission's recommendations do not require legislation to implement. In cases in which the Department of Transportation and the FAA have more than ample existing statutory authority to make changes, we believe that legislation should not be pursued. We need the flexibility to respond to changing security threats.

So that there can be no misunderstanding, Secretary Skinner and I are not opposed to legislation in the aviation security area where additional authority is required to help us do our job more effectively. Criminal background checks and ratification of the Montreal Protocols are examples where legislative actions are needed.

As I stated, we have made much progress. Shortly after the commission's report was issued, Secretary Skinner established an Office of Intelligence and Security within his immediate office to oversee policy and strategic planning for security and intelligence activities within the Department.

The head of this office, Vice Admiral Clyde Robbins, United States Coast Guard, an officer with a long and distinct service in aviation and operations including intelligence and security, is here with me today. Admiral Robbins, who was appointed to that position in July, serves as the Department's primary liaison with the intelligence community and reports directly to the Secretary.

Within the FAA, I have elevated the organizational status of civil aviation security functions so that it is now headed by an assistant administrator who reports directly to me.

We have finalized agreements to assign 27 FAA security personnel to European and Middle East locations to monitor compliance with security requirements overseas and to work with foreign aviation authorities to facilitate the implementation of U.S. security requirements. Fifteen of those employees are now in place, and we will have the remaining 12 employees on post in a very short period of time. Just this past week we have requested placement of an additional 27 persons, aviation security personnel in the Pacific and Latin American areas.

We continue to accelerate our research and development efforts to identify and refine technology that will assist in the detection of explosives. This effort is a broad-based one involving work with all government agencies, foreign authorities, U.S. aviation interests and expert scientists. We are continuing to gain operational experience with the Thermal Neutron Analysis systems as well, and that experience is proving very useful and very positive.

I am concerned about legislating new organizational requirements within the FAA and the Department. Adequate statutory authority exists now in this area. The new office established by the Secretary and the organizational changes I have made in the FAA meet this objective without the blurring of authorities and responsibilities.

Section 9 of the bill would seriously hamstring the FAA's ability to respond to the terrorist threat with the new technology solutions. Despite our best efforts, these measures could take a protracted period of time to achieve. What this means is that regardless of the terrorist threat and regardless of what technology is available, we cannot act to establish explosive detection system requirements until all of the prior steps are accomplished.

I think this illustrates the kind of inflexibility which we must guard against. It would ill suit our Nation's battle against terrorism if we so restrict ourselves that we cannot respond effectively or decisively to counteract one of the most dynamic threats we face.

In closing, Mr. Chairman, we view the commission's report as a very serious effort which demands a serious response on our part, and that is exactly what we have been doing.

That completes my summarization, sir. Admiral Robbins may choose at this time to add some brief comments concerning his new position.

[The statement follows:]

STATEMENT OF HON. JAMES B. BUSEY, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION

Mr. Chairman and Members of the COMMITTEE. I appreciate the opportunity to appear before the Committee today to testify concerning S. 2822, which is intended to implement recommendations of the President's Commission on Aviation Security and Terrorism.

We view the recommendations of the report of the President's Commission on Aviation Security and Terrorism as a significant contribution to our ongoing efforts to enhance the security of the traveling public. Since the issuance of the report, we have acted promptly to make key changes in security practices; in fact, about two-thirds of the recommendations are already being acted upon by the Administration.

Both Secretary Skinner and I have spent considerable time along with our senior staff putting in place needed changes and in ensuring that the Commission's report has been objectively and fully reviewed. Our objective has been to ensure the changes we make in response to the Commission's findings will, in fact, result in long-term benefits for the traveling public. To my knowledge, this swift and substantive response by the Executive Branch to a report by a Presidential commission is unprecedented..

Because of the serious response that is underway, the Administration continues to believe that legislative efforts should be held in abeyance. The President's Commission recognized in its report that some of its recommendations were far-reaching and represented a dramatic shift in the government's traditional approach to civil aviation security. To that end, the Commission recommended that "the Secretary of Transportation and the Secretary of State be directed to report to the President, the Congress and the American people in one year on actions taken in conjunction with this Commission's Report, and the results of those actions." Today, we have had less than five months to fully address the report.

Many of the Commission's recommendations, of course, do not require legislation to implement. In cases in which DOT and FAA have more than ample existing authority to make changes on our own, we believe that legislation should not be pursued. The oversight process provides an adequate opportunity to assess both our performance and our implementation of those recommendations. We need flexibility to respond to changing security threats.

So that there can be no misunderstanding, Secretary Skinner and I are not opposed to legislation in the aviation security area where additional authority is required to help us do our job more effectively. Criminal background checks and ratification of the Montreal Protocols are examples. We fully understand the families' desire to ensure that the progress we have made in the past year is long-lasting. But in our haste to take action, we must not act precipitously to enact legislation that may actually hinder us from carrying out our serious responsibilities.

As I stated, we have made much progress. Shortly after the Commission's report was issued, Secretary Skinner established an Office of Intelligence and Security within his immediate office to oversee policy and strategic planning for security and intelligence activities within the Department. The head of this office, USCG Vice Admiral Clyde E. Robbins, is with me today. Admiral Robbins, who was appointed to the position in July, serves as the Department's primary liaison with the intelligence community and reports directly to the Secretary. Within the FAA, I elevated the organizational status of the civil aviation security function so that it is now headed by an Assistant Administrator for Civil Aviation Security who reports directly to me.

In order to bring about a more concentrated focus on security research and development activities and clearer accountability, we have established the position of Director for Security Research and Development within the FAA.

On September 1, we took final action to upgrade standards for metal detectors and are working with the air carriers to implement the new standards. We have tightened the requirement for the reporting of threat information to the FAA by carriers and taken steps to assure that threats are appropriately dealt with by carriers. Further, we have nearly completed rulemaking to establish enhanced performance standards for x-ray equipment used in the baggage screening process. FAA is currently reviewing the comments received in response to that proposal in preparation to issuing the final rule.

We are amending the Air Carrier Standard Security Program to require by the end of this year positive passenger bag match procedures for all international U.S. air carrier flights and to establish improved domestic passenger screener selection and training standards. We intend to apply these requirements to foreign air carrier operations in the United States as well.

We are working aggressively with our Aviation Security Advisory Committee to solicit their advice on a variety of topics identified by the COMMISSION. cargo and mail security procedures; bomb threat response procedures; airport design standards; and the most effective assignment of security functions among air carriers, airport operators, and federal security personnel. The Committee is finalizing reports on bomb threat reporting; contingency plans;' and exclusive area agreements at airports. Committee reports will be presented on the remaining issues at the next Committee meeting on October 18.

We have continued our meetings with the FBI to agree on a series of joint actions to enhance civil aviation security READINESS.

FAA and FBI are hosting a seminar next week with officials of the major U.S. international carriers to discuss challenges to civil aviation security.

FAA and FBI will hold joint meetings in November for our field personnel assigned to major U.S. airports to discuss threat and vulnerability issues and how best to complement each other's responsibilities.

FAA and FBI are developing plans to send teams to major U.S. airports to conduct airport specific evaluations. Team's findings will be available for making changes in contingency plans and in improving crisis management guidelines.

We have finalized agreements to assign 27 additional FAA security personnel to European and Middle East locations to monitor compliance with security requirements overseas and to work with foreign aviation authorities to facilitate the implementation of U.S. security requirements. Fifteen of these employees are in place, and we expect to have the remaining 12 employees on post as soon as possible. Just this past week, we have requested placement of additional aviation security personnel in the Pacific and in America.

We continue to accelerate our security R&D efforts to identify and refine technology that will assist in the detection of explosives. This effort is a broad-based one involving work with other governmental agencies, foreign authorities, U.S. aviation interests, and expert scientists. We are continuing to gain operational experience with the Thermal Neutron Analysis systems as well, and that experience is proving both useful and positive.

We have many concerns with the legislation and the inflexibility that legislative rather than regulatory or administrative solutions provide. I am concerned about legislating new organizational realignments to exercise security authority within the FAA or the Department. Adequate statutory authority exists in this area. The new office established by Secretary Skinner and the organizational changes I have made in FAA meet this objective, and without blurring authorities and responsibilities. Another provision of strong concern to the Administration is the section dealing with victims' compensation, which would call upon the President to propose legislation in this area. Another example of our concern is section 9 of the bill, which deals with the deployment of explosive detection systems.

Section 9 would seriously hamstring the FAA's ability to respond to the terrorist threat with new technology solutions. Before the FAA could act to implement explosives detection system requirements, it would have to conduct an R&D effort to determine the minimum amounts/types/configurations of explosives which could cause catastrophic damage to aircraft. Once that effort was completed, FAA would need to establish a test protocol to assure that candidate systems would reliably detect that minimum amount of explosives, and would have to receive the approval of the R&D advisory committee to use the protocol. Following those activities, a candidate explosives detection system would need to be evaluated using that protocol and in an operational airport environment.

Despite our best efforts, these measures would likely take a protracted period of time to achieve. What this means is that regardless of the terrorist threat and regardless of what technology is available, we cannot act to establish explosives detection system requirements until all of the prior steps are accomplished.

This illustrates the kind of inflexibility which we must guard against. It would ill suit our Nation's battle against terrorism if we so restrict ourselves that we cannot respond effectively or decisively to counteract one of the most dynamic threats we face. As I noted earlier, in keeping with the Commission's own observations, we believe that additional time should be provided to more fully evaluate and implement the Commission's recommendations. That would enable us to pinpoint those areas where legislation would facilitate rather than potentially hamper our ability to combat the terrorist threat.

In closing, Mr. Chairman, we view the Commission's report as a serious effort which demands a serious response on our part. And that is exactly what we have been doing. We are anxious to make those structural and procedural changes that will tangibly improve security. All of us share that objective. We appreciate your continued interest and support for a strong security system, and will be pleased to keep you apprised of our further efforts to implement key improvements in security.

That completes my prepared statement, Mr. Chairman. Admiral Robbins and I would be pleased to respond to questions you may have at this time.

Admiral ROBBINS. Thank you, Senator.

As the Admiral said, I have been on board since July 15, and I have read a lot, and I have had hundreds of meetings, as you can guess, and I have traveled widely in the U.S. and Europe. I have met with the intelligence community and the State Department, ATA, the British, the Germans, the Italians, and the Greeks, the next-of-kin of Pan Am 103 and many others. It has been an educational experience for me. I have seen a lot of things that need to be done. I have seen a lot of things that are being done and improvements that have been made since Pan Am 103.

That is not to say, again, that there is not still a lot to do. There is a lot of activity out there in the commercial companies developing new equipment, and I am delighted with that. The Admiral and I both agree that we are going to do everything that we can to encourage development of more and better equipment as well as some of the more esoteric things that need to be done.

I spend a lot of time with the Secretary. I meet with him one on one every day that he is in the office, which is probably 4 out of 5 days per week. So I know that Secretary Skinner is very interested in the security issue and takes the time to concentrate on it.

I consider the commission report my job description. I find it is a very good report, and it will provide the model for what I need to do over the next few years.

Thank you, Mr. Chairman.

Senator FORD. Thank you, Admiral.

STATEMENT OF MORRIS D. BUSBY, COORDINATOR FOR COUNTER-TERRORISM, DEPARTMENT OF STATE; ACCOMPANIED BY CARMEN DIPLACIDO, DIRECTOR, CITIZEN CONSULAR SERVICES, BUREAU OF CONSULAR AFFAIRS

Ambassador BUSBY. Thank you, Mr. Chairman. Like Admiral Busey, with your permission I would like to submit a statement for the record.

Senator FORD. Without objection, your full statement will be included in the record.

Ambassador BUSBY. Thank you, Senator. I would like to make a few remarks and perhaps highlight some of the things you will find in our prepared testimony.

First off, let me join the others in thanking the commission for their work and thanking you for holding this hearing today. As you probably know, I met with the commission in closed session.

Members of the Department of State, Bureau of Consular Affairs and other officials testified before the full commission.

I have to say that personally, I think that the report of the commission was an extraordinarily useful document. We agree with virtually all of its recommendations. As Admiral Robbins has said, I think it provides a roadmap for improvement in this particular system and a useful lesson to learn out of this terrible tragedy of Pan Am 103.

I might also say that the leadership and the effort that went into the commission's work on the part of the Senate Members, Senators D'Amato and Lautenberg, was something which was really extraordinary. They put in an inordinate amount of work and number of hours in working with the commission on this effort.

As you have already heard, Mr. Chairman, the administration does not believe this legislation is necessary at the present time. I will not go into all of the arguments that have already been put forward. I would rather take this small amount of time to make a couple of points that I think are important.

The State Department has, as has already been indicated by Senator D'Amato and others, made a number of changes in its operations not only with regard to the Consular Affairs Bureau and those operations—which Mr. DiPlacido can go into at some length if he would like—but also in some of our counter-terrorism coordination, particularly as regards the threat and warning system.

Let me also say that the commission was rather critical of some of our operations, I think in some cases justifiably so. We accepted that criticism. I think we have made some notable changes to correct some of the problems that were present at the time of the Pan Am 103 bombing. The commission was very useful to us in that regard. We have had some very frank conversations with them.

I might also say that the conversations and the meetings we had with the families of the victims of Pan Am 103 have been very, very useful, particularly from the Consular Affairs side, in helping us make some of the changes.

There are some of the aspects of the bill I might comment on. One of the things that the commission recommended was that the administration should move to negotiate comprehensive aviation security agreements with foreign governments. That is reflected in the companion bill on the House side and in the legislation that you are considering.

I would have to say a couple of things. One, the Department of State is committed to do this. We have already given it a great deal of thought and are making some changes to enable us to do that. In the bill which you are considering, I welcome that you have not assigned this particular function to any one office or operation within the Department. The companion bill does that. In fact, it assigns it to me, to my operation.

I certainly do not mind being put in the target circle, as it were, on this. I think this is what we are going to do in any event. I think, however, it is, quite frankly, wrong for the Congress to tell the Secretary of State just exactly how he should do these things. We agree with the objectives, and we will do them.

On the bill itself, I will not go into detail on the particulars of some of the changes that we would recommend. That is in my prepared testimony, and we have passed those recommendations to the staff. Let me say just a couple of things.

One, I would like to applaud the provision in the Senate bill which insures that the government cannot be held liable for decisions that it makes on threat notification matters. As you well recognize, assessing intelligence and issuing threat notification is far from being a hard science. It is a matter of judgment.

We rely on our intelligence community and our analysts to do that. I think to say that they should be civilly liable for the judgments they make based on raw intelligence information is going to be very counterproductive. What you will end up with is a system where every single scrap of information that is available is just simply going to be made public. You will not have the benefit of analysis. You will not have any kind of threat notification system which is going to be useful either to the traveling public or to those of us who have some operational responsibilities for trying to thwart terrorist attempts to bomb aircraft or to undertake other terrorist actions.

The second concern that I would point to is section 26 of the bill, which pertains to what Senator Lautenberg referred to as a level playing field. The section as written requires that the FAA issue regulations requiring foreign airlines to implement certain security procedures at overseas airports. Quite frankly, I find that somewhat inconsistent with section 25, which says that we should go out and negotiate international agreements to do the very same thing. I would comment, sir, that if a foreign government attempted to impose on us the provisions that are contained in section 26, we would dismiss it out of hand. These are matters which should be negotiated. We are committed to do that. But you are not going to help our negotiating effort by legislating that the FAA is required to impose these standards when, in fact, I think they do not have the ability to do that on a foreign government.

We face some of the same problems, quite frankly, in the companion bill in the House. I would say that the bill as it was passed by the other house of Congress, in our opinion, is satisfactory and alleviates those particular problems.

If I could, I would like to also comment on a couple of matters that do not appear in this bill but which I think are extraordinarily important. The first pertains to the Anti-terrorism Assistance Training Program, which is administered and run by the Department of State. This is a very modest program. We had something like $10 million in that program last year. It is a program whereby we provide training, a lot of aviation security training, to foreign governments to enable them to refine and build their own counter-terrorism and security capabilities.

The legislation currently on the books contains a provision which says that we cannot conduct that training overseas. We are required to bring these people to the United States. We employ contractors. We put them in school here. It costs us a great deal of money to do that, and, in fact, the training is inefficient. It would be much better, particularly on the aviation security side, if we were able to conduct this kind of training in the very airports where these people are going to work. We could do that.

I think that originally the concern had to do with a decade or so ago when people conducted training programs which were felt to be particularly in Central America, training people to conduct human rights abuses and so forth. That is not an issue at this time. I would strongly urge that you give some consideration to including an amendment, as is in the other bill, which would allow us to conduct training overseas.

The second point I would like to raise, with your permission, is to make a personal appeal for Senate ratification of the Montreal Protocols to which Admiral Busey has already alluded. These protocols were negotiated over a decade ago. They have been ratified by some 17 countries already. We are the leaders in the world in this particular field, and I think if we could in fact ratify these protocols it would give us an opportunity to move forward on the whole question of aviation security.

It is long overdue, and it has already been reported out of the Senate Foreign Relations Committee. I would again like to make a personal appeal that insofar as possible we get that done in this Congress.

Senator, that concludes my remarks. I thank you for your time and attention.

[The statement follows:]

STATEMENT OF MORRIS D. BUSBY, COORDINATOR FOR COUNTERTERRORISM, DEPARTMENT OF STATE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I AM MORRIS D. BUSBY, THE COORDINATOR FOR COUNTERTERRORISM AT THE DEPARTMENT OF STATE. I AM ACCOMPANIED TODAY BY CARMEN DIPLACIDO, THE DIRECTOR OF CITIZEN CONSULAR SERVICES IN THE BUREAU OF CONSULAR AFFAIRS.

THANK YOU FOR PROVIDING US THE OPPORTUNITY TO PRESENT THE DEPARTMENT OF STATE'S VIEWS ON S. 2822, WHICH WE UNDERSTAND IS BEING AMENDED. THIS LEGISLATION WARRANTS CAREFUL REVIEW.

THE STATE DEPARTMENT COOPERATED CLOSELY WITH THE COMMISSION ON AVIATION SECURITY AND TERRORISM. I TESTIFIED BEFORE THAT COMMISSION IN CLOSED SESSION AND HAD A NUMBER OF MEETINGS WITH ANNE MCLAUGHLIN AS SHE REVIEWED THE TRAGEDY OF THE BOMBING OF PAN AM FLIGHT 103. THE BUREAU OF CONSULAR AFFAIRS ALSO APPEARED BEFORE THE COMMISSION ON SEVERAL OCCASIONS.

THE STATE DEPARTMENT IS PLEASED WITH THE FINAL REPORT OF THE COMMISSION AND BELIEVES THAT MOST OF ITS RECOMMENDATIONS ARE USEFUL. THEY

WILL IMPROVE AVIATION SECURITY AND HELP MAKE OUR GOVERNMENT MORE RESPONSIVE TO THE NEEDS AND CONCERNS OF VICTIMS OF TERRORISM. THE LEADERSHIP AND JUDGMENT PROVIDED BY THE SENATE'S MEMBERS OF THE COMMISSION, SENATORS LAUTENBERG AND D'AMATO, WERE CRUCIAL TO THE SUCCESS OF THIS COMMISSION. I WANT TO TAKE THIS OPPORTUNITY TO ACKNOWLEDGE ON BEHALF OF THE DEPARTMENT OUR APPRECIATION FOR THE JOB THAT THEY AND THE COMMISSION DID.

MR. CHAIRMAN, AS YOU ALREADY KNOW, THE ADMINISTRATION'S BELIEVES THIS LEGISLATION IS UNNECESSARY AT THIS TIME. WE ARE ALREADY IMPLEMENTING THE MAJORITY OF THE RECOMMENDATIONS MADE BY THE COMMISSION, A PROCESS WHICH THE COMMISSION ITSELF NOTED WOULD REQUIRE FROM SIX MONTHS TO A YEAR.

THE STATE DEPARTMENT HAS BEEN ACTIVE, BOTH BEFORE THE COMMISSION MET AND SINCE ITS REPORT WAS ISSUED, IN MAKING A NUMBER OF CHANGES TO OUR OPERATIONS. THESE NEW PROCEDURES ARE INTENDED BOTH TO HELP REDUCE THE RISK OF ANOTHER TRAGEDY SUCH AS PAN AM 103 AND TO IMPROVE THE DELIVERY OF SERVICES TO THE FAMILIES OF VICTIMS OF SUCH ATROCITIES. WE HAVE ALSO WORKED CLOSELY WITH THE FAA TO ASSIGN AVIATION SECURITY PERSONNEL TO EMBASSIES AND CONSULATES IN EUROPE AND THE MIDDLE EAST. WE EXPECT TO RECEIVE FROM THE FAA IN THE NEAR FUTURE DETAILS OF ITS PROPOSAL TO ASSIGN ADDITIONAL SECURITY PERSONNEL TO POSTS IN ASIA AND LATIN AMERICA. THIS WILL TRIGGER A COOPERATIVE AND EXPEDITED REVIEW OF THIS REQUEST WITH THE CONCERNED EMBASSIES AND CONSULATES.

THE STATE DEPARTMENT HAS MADE NUMEROUS CHANGES TO ITS CONSULAR OPERATIONS TO HELP ENSURE THAT THE "LESSONS LEARNED" FROM THE PAN AM 103 TRAGEDY ARE FULLY INTEGRATED INTO OUR CRISIS MANAGEMENT PROCEDURES. WE ARE WORKING WITH THE DEPARTMENT OF TRANSPORTATION TO DEVELOP A PROGRAM WHICH WILL ENSURE THE PROMPT PROVISION TO THE DEPARTMENT OF STATE OF PASSENGER MANIFESTS IN THE EVENT OF AN INTERNATIONAL AVIATION TRAGEDY. WE HAVE INSTITUTED A CASE WORKER SYSTEM TO PROVIDE A SINGLE POINT OF CONTACT BETWEEN THE DEPARTMENT AND THE FAMILY OF A VICTIM. WE HAVE IMPLEMENTED NEW PROCEDURES FOR NOTIFYING FAMILIES OF VICTIMS AND ESTABLISHED A TOLL-FREE NUMBER FOR THEIR USE. WE HAVE STRENGTHENED OUR TRAINING COURSES FOR CONSULAR PERSONNEL WITH A PARTICULAR EMPHASIS ON BEREAVEMENT TRAINING. WE HAVE STAFFED AND, IN FACT, DISPATCHED SPECIAL TEAMS OF CONSULAR OFFICERS TO PROVIDE SERVICES AT DISASTER SITES. WE NOW HAVE PROCEDURES TO ASSURE THAT VICTIMS OF TERRORISM ARE GIVEN APPROPRIATE RECOGNITION. THE DEPARTMENT IS ALSO HARD AT WORK PROVIDING THE GENERAL PUBLIC ACCESS TO THE INFORMATION CURRENTLY FOUND ON THE OSAC (OVERSEAS SECURITY ADVISORY COUNCIL) "ELECTRONIC BULLETIN BOARD" MANAGED BY THE BUREAU FOR DIPLOMATIC SECURITY.

IN ITS REPORT, THE COMMISSION URGED THE ADMINISTRATION TO NEGOTIATE COMPREHENSIVE AVIATION SECURITY AGREEMENTS WITH FOREIGN GOVERNMENTS. THIS OBJECTIVE IS REFLECTED IN THE BILL BEING CONSIDERED BY THE COMMITTEE. THE DEPARTMENT OF STATE FULLY SUPPORTS THIS OBJECTIVE. NEGOTIATING SUCH AGREEMENTS WILL NEITHER BE EASY NOR QUICK; INTERNATIONAL NEGOTIATIONS, ESPECIALLY ON CONTENTIOUS OR DIFFICULT ISSUES OFTEN TAKE SEVERAL YEARS TO COMPLETE. THE DEPARTMENT IS, HOWEVER, COMMITTED TO UNDERTAKE THIS EFFORT. SEVERAL BUREAUS WILL COOPERATE IN THIS ENDEAVOR AND WE WILL WORK IN CLOSE COORDINATION WITH THE DEPARTMENT OF TRANSPORTATION.

THE DEPARTMENT IS PLEASED THAT THE SENATE RECOGNIZES THE COMPLEXITY OF THIS ISSUE AND HAS NOT ESTABLISHED IN ITS VERSION OF THE BILL A NEW OFFICE IN THE DEPARTMENT NOR ASSIGNED THIS RESPONSIBILITY TO A SPECIFIC BUREAU. THESE DECISIONS SHOULD BE MADE BY THE SECRETARY OF STATE, CONSISTENT WITH THE RESOURCES AND PERSONNEL AVAILABLE TO THE DEPARTMENT.

WE WOULD LIKE TO OFFER A NUMBER OF SPECIFIC COMMENTS ON THE AMENDED BILL. FIRST, THERE ARE A NUMBER OF ELEMENTS OF THE SENATE VERSION OF THIS BILL WHICH ADDRESS ESSENTIAL CONCERNS OF THE ADMINISTRATION. PERHAPS MOST IMPORTANT IS THE PROVISION IN THE SENATE BILL WHICH ENSURES THAT THE GOVERNMENT CANNOT BE HELD LIABLE FOR DECISIONS IT MAKES ON THREAT NOTIFICATION MATTERS. ASSESSING THREATS AND INTELLIGENCE INFORMATION IS FAR FROM A HARD SCIENCE. JUDGMENTS MUST BE MADE. IF ALL SUCH DECISIONS MUST INCLUDE AN ANALYSIS OF THEIR POTENTIAL CIVIL LIABILITY ASPECTS, WE WILL HAVE CREATED A SYSTEM IN WHICH INEVITABLY

WARNINGS WILL BE ISSUED ON EVERY SCRAP OF INFORMATION RECEIVED, WITHOUT THE BENEFIT OF CAREFUL ANALYSIS OR EVALUATION. SUCH A SYSTEM WOULD BE WORTHLESS.

THE DEPARTMENT IS CONCERNED THAT THE SCOPE OF SECTION 11 COULD AFFECT DIPLOMATIC POUCHES, CONTRAVENING THE VIENNA CONVENTION. SECTION 16, WHICH WOULD REQUIRE THAT THE PRESIDENT SUBMIT A LEGISLATIVE PROPOSAL, RAISES SERIOUS SEPARATION OF POWERS ISSUES. SECTION 17, WHICH DEALS WITH PASSENGER MANIFESTS, SHOULD APPLY STATUTORILY TO U.S. CARRIERS ONLY. WE CAN AND WILL WORK WITH OTHER GOVERNMENTS TO ESTABLISH A COMPREHENSIVE UNDERSTANDING ON THIS ISSUE, BUT URGE THAT THE CONGRESS REFRAIN FROM ESTABLISHING SUCH A POLICY AS A CONDITION OF SERVICE BY FOREIGN CARRIERS TO THE U.S.

THE STATE DEPARTMENT ALREADY APPLIES ITS POLICIES ON CONSULAR CRISIS MANAGEMENT TO ALL DISASTERS; WE WOULD SUGGEST, THEREFORE, THAT SECTION 21 BE BROADENED TO REFER TO ALL MAJOR DISASTERS BY DELETING THE WORD "AVIATION" IN LINE 13. IN SECTION 25 WE WOULD SUGGEST THAT YOU REPHRASE LINES 22 AND 23 AS FOLLOWS: CONSULTATION WITH THE DEPARTMENT OF TRANSPORTATION, SHOULD BE RESPONSIBLE FOR NEGOTIATING AVIATION SECURITY..." THIS CHANGE WOULD CLARIFY THAT THIS SECTION APPLIES TO ALL AVIATION NEGOTIATIONS, NOT JUST THOSE UNDERTAKEN PURSUANT TO THIS BILL. SECTION 26, WHILE LAUDABLE IN ITS EFFORT TO SECURE A "LEVEL PLAYING FIELD," IS A SOURCE OF PARTICULAR CONCERN. THIS SECTION, AS WRITTEN, REQUIRES THAT THE FAA ISSUE REGULATIONS THAT REQUIRE THAT FOREIGN AIRLINES IMPLEMENT CERTAIN SECURITY PROCEDURES AT OVERSEAS AIRPORTS. THIS SECTION RAISES FUNDAMENTAL SOVEREIGNTY ISSUES AND THE SENATE MAY WISH TO EXAMINE SECTION 105 (K)(2) OF THE HOUSE BILL WHICH WE BELIEVE AVOIDS MANY OF THESE PROBLEMS.

I WOULD ALSO STRONGLY URGE THAT REGARDLESS OF WHETHER THIS BILL PASSES, THE SENATE PASS AN AMENDMENT WHICH AUTHORIZES THE ANTI-TERRORISM ASSISTANCE (ATA) PROGRAM TO OFFER "IN-COUNTRY" TRAINING. THIS TRAINING IS A VITAL ELEMENT IN THE U.S. COUNTERTERRORISM STRATEGY AND PROVIDES ESSENTIAL ASSISTANCE TO GOVERNMENTS THROUGHOUT THE WORLD IN IMPROVING THEIR COUNTERTERRORISM CAPABILITIES, PARTICULARLY CONCERNING AVIATION SECURITY. THE ADMINISTRATION HAS LONG SOUGHT SUCH A CHANGE TO MAKE THIS TRAINING MORE EFFECTIVE AND COST-EFFICIENT. SUCH AN AMENDMENT HAS BEEN APPROVED TWICE BY THE HOUSE INCLUDING EARLIER THIS WEEK AS SECTION 214 OF ITS COMPANION BILL, AND ONCE BY THE SENATE FOREIGN RELATIONS COMMITTEE. WE ARE AWARE OF NO SUBSTANTIVE OBJECTION TO THE CHANGE. APPROVING SUCH A PROVISION WOULD PROVIDE A LONG OVERDUE CHANGE TO THE BASIC AUTHORITIES OF THE ATA PROGRAM.

I WOULD ALSO LIKE TO TAKE THIS OPPORTUNITY TO MAKE A PERSONAL APPEAL TO THE SENATE FOR RATIFICATION, AS RECOMMENDED BY THE COMMISSION ON AVIATION SECURITY AND TERRORISM, OF THE PENDING MONTREAL PROTOCOLS. THIS INTERNATIONAL AGREEMENT WILL GREATLY INCREASE THE LEVEL AND SPEED OF COMPENSATION AVAILABLE TO VICTIMS OF INTERNATIONAL AVIATION TRAGEDIES. IT WAS REPORTED FAVORABLY BY THE SENATE FOREIGN RELATIONS COMMITTEE ON A 14-2 BIPARTISAN VOTE. RATIFICATION IS LONG OVERDUE; TO HAVE THIS CONGRESS ADJOURN WITHOUT FINAL ACTION ON THIS AGREEMENT WOULD SET US BACK IMMEASURABLY.

MR. CHAIRMAN, THAT BRINGS ME TO THE END OF MY PREPARED REMARKS. I WOULD BE PLEASED TO ANSWER ANY QUESTIONS THAT YOU MAY HAVE.

Senator FORD. Thank you very much, Ambassador. It is a little bit interesting to this Senator, listening to your statements which says, we do not want any legislation. We already have the authority to do it now and leave us alone. And then the Ambassador says, he does not want us to tell the Secretary of State what to do and that sort of thing, and trust us. We are going to get it done. Well, that is fine.

Let me tell you what I hear all the time. I trust you but I do not know who is coming in after you and so I want to be sure the next fellow does what I want him to do, and during that period of time we probably will ask you to do some things too. I think we can modify this bill to eliminate some of the problems and I think those that have proposed a bill are amenable to try and work out something that does not trample on the authority of the Secretary of State or the Secretary of Transportation, and that we can accommodate each other, and do what is the full intent, I believe, of this piece of legislation.

Admiral Busey, let me ask you a couple of questions. You head the operation of an agency with the responsibility for aviation security. This legislation would give the Secretary of Transportation responsibility for distribution of intelligence and development of security policy by giving you the responsibility for day-to-day security management and the safety of air travel and airports. Now, tell me how you think this split authority would work.

Admiral BUSEY. As I mentioned in my testimony, Mr. Chairman, that is one of the concerns we have with the legislation which specifically addresses functions and roles and missions and objectives that can be interpreted as being somewhat blurred. The Secretary and I have worked very carefully and very closely together in setting up the office which Admiral Robbins heads, and in defining the duties and functions of that office, which will enable the Secretary to have a day-to-day, real time understanding of what is going on in the world of international security, while at the same time doing the long-term strategic studies and analyses that will provide my people, on a day-to-day basis, with the guidance necessary for us to do our job.

We think that we have carefully defined the roles and missions so that there is no blurring and our concern with the legislative approach is that there is opportunity for interpretation in there. The Secretary and I see no difficulties in clearly understanding his oversight as a Cabinet-level officer and my responsibilities for the day-to-day operations of the system.

We believe that we have set up the roles and functions in a way to do that. I think Admiral Robbins feels comfortable with those functions the way they are defined and with his working guides, and he might wish to comment further in that regard, sir.

Senator FORD. But does not the Secretary of Transportation feel like he is your boss anyhow and you are supposed to do what he tells you to?

Admiral BUSEY. Yes, sir.

Senator FORD. So we have got that clear, so that really the responsibility will not change—if it is in the hands of the Secretary of Transportation, then it is his responsibility, period, is it not?

Admiral BUSEY. Yes.

Senator FORD. What authority do you have now to cancel flights?

Admiral BUSEY. I have adequate authority to cancel flights at the present time, sir. I have the statutory authority to take emergency action to remove certificates if necessary, and I think that authority is adequate to stop flights in the event that the threat situation warrants it.

Senator FORD. When you remove certificates, is that not the total airline rather than just a flight?

Admiral BUSEY. Yes.

Senator FORD. How would you cancel a flight by jerking the airline's certificate?

Admiral BUSEY. In the event an airline did not cooperate with our request for a flight to be canceled, we have that ultimate ability to pull the certificate and stop the entire operation, but we have had no difficulty in working with airline authorities on flight cancellations. The way it works in practice, if we have reason to believe that a situation warrants the delay or cessation of a flight, we exchange that information with an operator and they inevitably take the action on themselves to cancel that flight.

Senator FORD. Do you have the authority to jerk their certificate or does the Secretary of Transportation have that authority?

Admiral BUSEY. I have the authority.

Senator FORD. You have the authority and he does also?

Admiral BUSEY. Yes, sir.

Senator FORD. So either one of you can jerk a certificate of an airline?

Admiral BUSEY. Yes, sir.

Senator FORD. You indicated that you are working to put more FAA people overseas to deal with security. I think you said in your statement you have 15 in place now and 27 more fairly soon, and then you want an additional 27 in the Pacific and that area. What efforts are you taking to improve the flow of information between stations overseas and FAA headquarters?

Admiral BUSEY. By the ability to have a liaison, a security liaison officer at airports such as Frankfurt, such as Gatwick, and Heathrow who are there on a day-to-day basis, who are known personally to the security officials in the countries to which they are posted, we have experienced a significant increase in the flow of communications directly. We are now getting daily inputs from these folks. We are getting rapid reports at my headquarters of the inspections that our security officials make at airports and at airlines, U.S. airlines that we are overseeing at those airports. So the communications flow, based on the physical presence on a daily basis of an airport security officer, liaison officer at those airports, is paying dividends and has been for a number of months since we got the first person in place.

Senator FORD. How would you eliminate a foreign carrier from landing in the United States?

Admiral BUSEY. A foreign carrier can be prevented from landing in the United States by having their authority removed by the Secretary of Transportation.

Senator FORD. Is he the only individual who has the ability to remove that authority under present law, other than declaring some sort of an emergency?

Admiral BUSEY. Yes, sir, to the best of my knowledge.

Senator FORD. Well, would you agree that the same security requirements and procedures should be applied equally to U.S. and foreign carriers who fly in and out of the United States?

Admiral BUSEY. We have been moving through our bilateral negotiations as Ambassador Busby has mentioned. We have more than 50 of these bilaterals in place and we have seen that by our efforts in negotiating on a bilateral basis and in our continuing work through ICAO, we have seen a movement in the foreign carriers towards our brand of security procedures. I have just been informed that some overseas airways are starting, as we speak, a screening process similar to that which we use. So we are seeing a gradual movement of the security procedures being applied by foreign carriers towards our extraordinary security procedures.

The leveling of the playing field has been underway for some time through the negotiations. We continue to work through ICAO to raise the basic ICAO standards and we continue to see movement in that regard and we think that is the best way to continue to move foreign carriers towards this type of operation.

Senator FORD. What if you find a foreign carrier is just dilatory, that they just absolutely are not following the rules and you cannot get them to come along, and they are not upgrading and that sort of thing, what would your final position be under those circumstances?

Admiral BUSEY. I think that would depend upon the progress that was being made through the negotiations and it would also depend upon the threat analysis in place in that time. But the final issue would have to be a determination made with and by the Secretary of Transportation to remove that operator's ability to operate in and out of U.S. airports.

Senator FORD. Well, Mr. Ambassador, let me ask you the same question. Would you agree that the same security requirements and procedures should be applied equally to U.S. and foreign carriers who fly in and out of the United States?

Ambassador BUSBY. Yes. I think that there should be appropriately high security standards for all of those carriers. I have no problem with that in concept.

Senator FORD. Well then, you would want to negotiate with them and try to talk them into increasing their security standards rather than say, you must by a certain date have certain standards available?

Ambassador BUSBY. The problem I have with us trying to legislate that kind of thing is that what you really are saying is that the Secretary of Transportation or Admiral Busey should put those regulations out and on a certain date, the foreign air carrier has to abide by them. Do we then pull their landing rights in the United States? I do not think that is a feasible proposition.

Senator FORD. Well, Ambassador, when we deal and work out an arrangement for an American carrier to land in a foreign country, and then we in turn agree to reciprocate, I find they always get a hell of a lot more than we do.

Ambassador BUSBY. On the security side?

Senator FORD. Every side, whatever it might be. We find little security over there and little compliance with our rules. If we get a slot it is down at the end of the runway, as far as you can get. You can almost walk from here to there. And it just seems that it is not a good deal. And if we continue that procedure then we really are going to have some problems here as it relates to foreign carriers continuing to build, and if we do not do something about their security as it relates to our standards, then I think we are making a real, real mistake. And then that causes Congress, if that does not occur, to do something you do not want us to do, and that is to say, do it by law.

Ambassador BUSBY. Senator, I am not the best person to comment on the commercial aspects of that.

Senator FORD. You are the best one they have sent up so far.

Ambassador BUSBY. I appreciate your kind remarks.

Senator FORD. You had better be careful. You ought to see who they send up here.

Ambassador BUSBY. Let me just comment for a moment——

Senator FORD. Pogo said "it's all down from here on up hill" or something like that.

Ambassador BUSBY. Let me just comment for a moment on what I think the commission was trying to get at with this particular recommendation. I had some extensive conversations with Ann Dore McLaughlin and other members of the commission about it. I think that their concern is that U.S. air carriers are subject to higher terrorist threat than some other airlines, but there are major air carriers who are subject to the same threat.

It is UTA and Air France and Pan American and some of the other major carriers that are more at risk than Air New Guinea, and that raises a problem because what we are bound by the ICAO negotiations which set minimum security standards. Then we layer on top of that these standards which Admiral Busey and his organization impose on our air carriers because we have the regulatory authority to do that. We can also impose certain standards on air carriers who land and fly in the United States, on their operations here.

My understanding of what the commission was getting at was to say, look, in these commercial civil aviation negotiations that we have, we get all tied up in competitiveness. You have a whole variety of systems where some countries subsidize their security arrangements for their airlines and curbside-to-curbside security is provided by the government. That gives them a competitive advantage.

You have, surely, some of our major allies that we ought to be able to sit down and talk to and begin to reach understandings because we have high threat. Officials in these countries can begin to move toward some common security standards in a way in which we can convince the commercial side of the house that we are not putting them at a disadvantage and why are you not doing that. That is where the recommendation came from.

I have no problem with that. In fact, I support that. As I think the Department of State has already testified earlier and I will tell you now we are committed to undertaking such an effort. I think that is the way to do it.

Admiral BUSEY. Mr. Chairman, if I might add to the comments the Ambassador has mentioned, we are moving towards leveling the playing field, so-called, here in the United States. We are putting in place the same requirements for foreign carriers operating from U.S. major airports.

The same security procedures for those departing flights that we are imposing on our own U.S. carriers are going to be in place in the next few months. We are in the process now of notifying the foreign carriers of those procedures to which they will be required to adhere; positive bag matching, for example, screening of passengers, use of X-ray devices. We will also be providing the same level of oversight to insure compliance by foreign carriers that we expect our U.S. carriers to comply with.

The difficulties that we face are imposing our brand of security, our extraordinary security procedures in foreign airports. We are dealing with sovereign nations. We are dealing with laws in those countries that have been on the books for many years.

In Belgium, for example, there is a law going back to 1937 that permits only Belgian citizens the right to the ability to hand search passengers in their transportation system. We have had to negotiate with the Belgian authorities through our embassy staff there in that county to permit that procedure to be conducted by Belgian nationals under the surveillance of our U.S. security personnel when we conduct hand searches of travelers going on U.S. carriers.

So those are the kind of procedures that take some time for us to negotiate, and we are experiencing increasing success in our ability to do that.

Senator FORD. Mr. Ambassador, you assert that if a bill is to move forward it should not include any provisions requiring the President to submit legislative proposal for compensation of victims of terrorism.

Is there any way that you see to alter the provision to make it acceptable to the administration?

Ambassador BUSBY. That is a matter which I really should talk to the folks at OMB about, and I would like your indulgence to do that.

Senator FORD. OMB is against everything except taxing the little fellow.

Ambassador BUSBY. Maybe Carmen could speak to that a little bit.

I think that we are exploring various alternatives on that particular provision. We have a particular problem with the requirement which states flatly the President shall submit legislation.

In concept I think that we should be able to come up with something which would be satisfactory, but I would beg your indulgence. I promise you that before the day is out I will come to you on that.

[The following information was subsequently received for the record:]

October 4, 1990

The Honorable Wendell Ford, Chairman,
Subcommittee on Aviation, Committee on Commerce, Science and Transportation, U.S. Senate

Dear Mr. CHAIRMAN. Thank you for providing me the opportunity to testify this morning before the Subcommittee on Aviation concerning S. 2822.

During the hearing you asked me for the Administration's views on section 16 of the bill which mandates that the President submit a legislative proposal concerning compensation to victims of terrorism.

First, I strongly support ratifying the Montreal Protocols. This is an important objective for the Administration and is a key building block in strengthening our overall aviation security and counterterrorism efforts. It would provide speedy and appropriate compensation to the families of victims of aviation sabotage or disasters. At the same time, these Protocols provide absolutely no benefits to the families of victims of any other type of terrorist incident and therefore fall short of the recommendations of the Commission on Aviation Security and Terrorism regarding adequate treatment and recognition of victims of terrorism.

However, as I explained, the Administration opposes a formulation of section 16 of S. 2822 which requires that the President submit legislation. Such a requirement raises serious separation of powers issues. I would suggest that you consider alternate language which calls upon the Administration to submit "recommendations" on this issue to the Congress. This formulation would address many of the separation of powers concerns raised by the current Senate version of this bill and at the same time accomplish the purposes I think you intend.

Again, thank you for your attention this morning and for providing me with an opportunity to comment upon this important issue.

Sincerely,

MORRIS D. BUSBY.

Admiral BUSEY. If I might add on that, Mr. Chairman——

Senator FORD. Wait. You cut him off before he finished his statement there. He said "I promise you before the day is out", and I did not get the rest of it.

Ambassador BUSBY. That I will respond to you on that particular point.

Senator FORD. Oh, boy. If you do that, it will be a new one.

Ambassador BUSBY. You might not like what I say, Senator.

Senator FORD. That is all right. I would rather have an answer that is an honest answer. I would hate for you to delay it until next week.

Admiral Busey.

Admiral BUSEY. I was just going to say, sir, that what we think is an acceptable alternative to that is the ratification of the Montreal Protocols.

Senator FORD. You are going to have to talk to the Chairman of this committee about that, too.

Mr. Ambassador, I have one more question, and then I will turn it over to my friend.

If we do apply the passenger manifest requirement to U.S. carriers only, what process do you see involved to obtain similar information from foreign carriers providing service to U.S. citizens?

Mr. DIPLACIDO. Sir, we believe we can work through the ICAO and work on a bilateral basis with the various airlines to satisfy that requirement.

Senator FORD. Thank you, gentlemen, very much.

Senator McCain, I am sorry I took so long.

Senator MCCAIN. That is quite all right, Mr. Chairman. Thank you very much. I thank the witnesses for their presence and their statements this morning.

Admiral Busey, do you plan to follow the commission's recommendation that the FAA develop stronger rules, uniform profiling procedures?

Admiral BUSEY. Yes, sir, we do. We are constantly working, Senator McCain, to strengthen the profiling procedures. We are seeking advice, as we have been doing, for a number of years constantly from the Israelis, for example, from other foreign carriers that are experiencing these types of systems. So we are constantly modifying that.

As an example, in Frankfurt now one of the U.S. carriers there is using a newly-devised, computerized profile system that we find very promising in that it is less inconvenient to travelers that are being exposed to that method of profiling, and so we are constantly working and will continue to work to strengthen the profiling.

Senator MCCAIN. Ambassador Busby, one of the things we are least proud of, of course, was the treatment of the next-of-kin during this disaster. God forbid there should be another one, but if there were, can you assure us and the American people that the treatment of the next-of-kin will be far different than it was in this case?

Ambassador BUSBY. Yes sir, I think I can. I have already said that I think the department has acknowledged its shortcomings in this particular area. We had some very frank discussions with the commission about this. We have had some very frank discussions with the families of Pan Am 103.

There have been a number of changes made in our consular operations and a number of things that, although I am not a consular officer, are now in place that would insure that the kinds of mistakes that were pointed to in the Lockerbie disaster would not occur again. But maybe I could ask Mr. DiPlacido, who comes from that particular side of the House, to comment on some of the things that were done.

Mr. DIPLACIDO. Yes, sir. As the Ambassador has indicated, we have enhanced our crisis management training and improved our procedures, and we have implemented many of the commission's recommendations in that regard. For instance, we have developed a caseworker system to deal with families of the victims. We have improved and revised our crisis management handbook.

We have made major efforts to train employees who work on task forces and to deal with families in crisis. In fact, we have trained over 200 people through a program that we developed in task force training in connection with the Foreign Service Institute, and we are training junior to senior levels. We have worked with various private groups that specialize in bereavement training and victim assistance. We have installed and revamped our computer in the task force area. We have installed toll-free lines. We have added rooms and equipment in the task force area, and we have developed new computer software to track cases. We are training teams, disaster teams to go to sites. In fact, we have sent several teams out already in various crises throughout the world and those teams are equipped with laptop computers, satellite telephones, cellular telephones, and radios, and we are working out other communication problems.

We have sent several instructions to our embassies abroad aimed at improving our response to crises, and we are developing new guidelines as we go along, and we intend to send those out as well to all the posts abroad. We have had conferences and workshops with consular officers, both here and abroad, and we have implemented many of these programs already.

Senator MCCAIN. And you also remind them from time to time that they are public servants like us, and that is one of the problems, if I might say that, not only in this situation but in others, when American citizens sometimes go to our consulates and to our embassies for help. Okay?

Mr. DIPLACIDO. Yes, sir.

Ambassador BUSBY. If I might just add to that. In addition to the procedural changes that Carmen has outlined, I think the most important thing that has happened is the increased sensitivity that has been generated as a result of this occurrence. I do not think there is anyone who has worked on this particular issue who has not been affected by that. We have made a number of changes. You do not hear a lot about them.

I would simply point to the fact that tragically we have lost additional people to acts of terrorism since Pan Am 103 and I think that if you were to examine the treatment of the families of those particular victims, particularly in the UTA crash, where we lost seven Americans, and the Philippines and other places, you would find that our handling of those particular cases has been far different.

Senator McCAIN. Good. Mr. Ammerman is going to testify a little later on and he has some concerns, so maybe very briefly you could address some of those concerns, since obviously you will not be here for that. He is concerned about the fact that the draft that we are working on concerning Federal security managers at high-risk airports is not appropriate in the Senate draft. Do you want to comment on that, Admiral Busey? He says that the intent of the Commission was to strengthen the security chain of command and the legislation as it is presently drafted eliminates the Federal security managers at high-risk airports.

Admiral BUSEY. Yes, it is absent in the draft, but nonetheless, from our vantage point in the FAA, it is still a commission recommendation and I am in the process of acting upon that. I have, in fact, at our domestic airports today, more than 200, at our high-risk airports more than 200 FAA security specialists. So what I am investigating is how do I empower one of those or two or three of those persons at each of those high risk airports, what chain of responsibility and authority do I extend to them, what of my authorities do I extend to them.

So we are going through the organizational issues. We are working with the public advisory committees that I have. That is one of the tasks I have given them is how to identify the roles and missions and responsibilities of that person, and I fully intend to put in place a security manager at each of our high-risk domestic airports, and in addition, at each of the overseas high-risk airports where we have international operations.

We already have the foreign liaison officers in place at these airports. I addressed that briefly before, and I am also going through the process of identifying the channels of immediate communications, the chain of accountability, responsibility, and authority to extend to each of those individuals.

So we are, in fact, putting those in place in response to the committee recommendations, and that is another one of the reasons why we feel that legislation is not necessary to enable us to do that. We will have that in place very shortly.

Senator McCAIN. Mr. Ammerman also contends that 60 months or 5 years is too long to wait for new equipment and procedures needed to meet the technological challenges presented by terrorism. He recommends 36 months as sufficient time.

Admiral BUSEY. Our problem there, Senator McCain, is as I know from your experience in the aviation business, you are aware that manufacturers will come to us and say, I have got this widget that I can give you, and we can have it in place in 18 months. But when we go through the specification process, the Government procurement process, we have obstacles that we face that take time. We are investigating other ways to try to speed up the flow of equipment. I am using preplanned product improvement, if you will, or phased upgrades, for example, on the TNA device that will significantly improve its performance capabilities and regain for us its deterrent capabilities.

So there are various ways that we can get machinery technology in place as part of the system of security at an airport, and we are doing this hand in hand with the training and the screening of personnel because we have got an overall system that we have to apply. But some of the time frames we have to deal with in getting new equipment from drawing boards, or from the brains of bright people who have innovative ideas, into operational hardware that can operate reliably for a long period of time with supply support in place, et cetera—there are just physical constraints that we cannot speed up.

Senator MCCAIN. They have concerns about the loose wording and watered down language in two areas, the exception which allows the FAA to suspend the security rule for a U.S. carrier if the host government causes difficulty, and also as regards to mail and cargo screening. Would you be willing, Admiral Busey, to listen to or look at recommendations they might have to strengthen both those areas?

Admiral BUSEY. Yes. I think we are aware and have seen those recommendations for strengthening in both of those areas and I will continue to pay attention to that. I would be more than willing to look at those concerns.

Senator MCCAIN. Thank you. Finally, Ambassador Busby, on this business of the threat warning, I do not know anything that is more difficult than how you decide which is an idle threat and what is something that has to be taken seriously, to shut down an airline or flights for the day. If carried to its extremes, someone could call National Airport every day, every morning and say there is a bomb on every flight that is leaving National Airport and that would be a terrible thing for the Nation. But on the other hand, there were allegations of selective warning in the case of Pan Am 103, which I think had been, at least to some degree, substantiated.

First of all, what is the proper approach and are there uniform procedures now to implement the proper approach?

Ambassador BUSBY. Let me say with regard to the specific case of Pan Am 103 and the Helsinki warning, one of the things which the commission did which I really applaud was that they conducted the most thorough investigation of that particular incident that anyone could possibly have hoped for, and they did it publicly. For their hearings, they brought back from Moscow people who had been involved in that. They interviewed everybody that they possibly could all over the world. I think their conclusion out of all of that—that there was not, in fact, any double standard—was something which hopefully put to rest that particular question.

Now having said that, let me say that at the same time the controversy caused us to take a very, very hard look at our procedures to insure that never again could we be even accused of any kind of double standard and, in fact, to take a hard look at the kinds of threats that perhaps we should make public. There are uniform procedures.

I will tell you what I told the commission. I think that in looking at this whole area which is very complicated, if they wanted to look for fault, bad judgment perhaps, you will always find that in any system where people are operating. They should look at the institution, look at the procedures; are we doing this as well as we can, and then are we putting the best people we can on the job.

They made some recommendations. They made some private recommendations. They talked to me about it. We have made some changes in those procedures. I think that the most notable one I would point to is that we have in fact begun making public some threat information which we might not have done earlier if it affects the general public. We have specific and credible information which, whether or not we can counter it, we are doing that, and we have done it in at least three particular instances in the last year or year and a half.

In December we issued a general threat warning for Europe regarding Hezbollah. You may have seen that. I can tell you that that was based on information. There was no specific threat, but we had a feeling that something was going to happen on the basis of a great deal of information at which we were looking. We made that threat public.

We have consistently over about the last 18 months been making information available to the public regarding the situation in the Philippines where Americans in general face a very heightened threat. We have, of course, issued a threat warning regarding the Middle East and Iraq in the current crisis. That, again, is based upon intelligence information.

We are doing a couple of other things as well. One of the things coming down the road, and which we have already decided to do, is that we are modifying a system which is within the State Department currently available only to members of the Oversees Security Advisory Council, people who pay for it, called an electronic bulletin board, where we put security-related information. It was originally designed for businesses overseas to take a look at a multi-year security trend in a particular country in which they might want to invest.

That whole operation is being modified. It is being turned over to Mr. DiPlacido's bureau and is going to be available to the general public. So the travel offices and the general public through a modem will simply be able to punch up and get all the relevant publicly-available information which includes all of our threat advisories, warnings and so forth anyplace in the world.

The procedures that we have in place I am convinced are just about as tight and as good as we possibly could make them. As I say, in retrospect I think that you will always be able to say, well, you made a wrong guess here.

Senator McCAIN. Thank you.

Thank you very much, Mr. Chairman.

Senator FORD. Thank you, Senator McCain.

One thing I wanted to ask you, Admiral Busey, and correct me if I am wrong. Did I understand you to say that you were going to put a security officer in all of the high risk airports here in the United States and abroad?

Just yes or no would be all right, and then I will get to my question.

Admiral BUSEY. Yes, sir.

Senator FORD. Who has the authority over that security officer that you put there? Who does he report to? Something bothers me a little bit about that unless there is a coordinated effort, because those who manage the airport, we look to them for the security of that airport. Then if you drop a security officer in that airport and he is only responsible to you or to the Secretary of Transportation or whoever, we probably could lose some coordination and end up working at cross-purposes.

I am not trying to say that the security officer will not enhance safety, but I also can see that they may be working at cross-purposes, reporting to somebody and be doing things that would not necessarily be incorporated in the airport security plan.

Now to whom is that security person responsible?

Admiral BUSEY. Well, ultimately, sir, that security person is responsible to me because he would be a part of my organization. As I tried to imply briefly before, we do not have this totally solidified yet. I am relying on my public security advisory committee which consists of membership of the carriers, airport operators, and public interest groups. Every one of their meetings is, of course, open to the public, and they are attuned to those kind of inputs.

We are exploring these reporting relationships so that everyone understands what we are trying to do and just what the role and function of that FAA security specialist at an airport will be.

Our airport security procedures, as you know, require an airport, for example, to have a contingency plan, an emergency contingency plan that goes through various phases. We have recently reviewed all of those contingency plans. I intend in the near term, once we have the ability in place, to oversee it and to require drills or exercises of these contingency plans.

I envision in general terms my security specialists—and we still have not solidified their reporting channels. I cannot have every one of them, of course, reporting directly to me, but we have not solidified those reporting channels yet. That person is ultimately my representative at each airport, will be known to law enforcement officials, airport officials, air carrier officials, and will be the FAA person on site to insure compliance with the security procedures that we expect both the airport authorities and the air carrier authorities to comply with.

I see through the process through which we are going that we will eliminate any potential blurring of lines of authorities. We will eliminate any potential for ambiguities and interference, if you will, and we will end up with a stronger security operation at each of these airports simply because we have a person specifically tasked to be there every day to interface with authorities responsible for security and to insure their compliance therewith.

Senator FORD. You see why I am concerned about the overlapping of authority or going down different channels, one going one way trying to give orders from the FAA, and then the airport manager and his crew with certain responsibilities. They have a program of security that has been approved, link fences and security fences and all that kind of stuff.

I can see a breakdown if there is no coordination, and someone has to be responsible ultimately. You cannot have somebody away from the scene, in my opinion, that is responsible and starts to get on the phone and make reports back and forth. Something about that bothers this Senator a little bit.

Ambassador BUSBY. If I could make a point on that, Senator. The person we hold ultimately responsible is the ambassador in that country.

Senator FORD. What about the airports in this country? We are talking about domestic.

Ambassador BUSBY. Okay, internationally there is the possibility that we will assign people such as this overseas as well, and ultimately they operate under the authority of the Chief of Mission. And we hold him responsible for coordinating this thing. That is what his job is.

Senator FORD. Well, let me just say, if you leave it up to the ambassador, you scare me just a little bit. Because when you pay $250,000 to get an ambassadorship, I am not sure he knows anything about security.

So it just bothers this Senator a little bit. And Admiral, we have a couple of questions here from Senator Inouye about overflights and security at some national airports, at national parks. And rather than having that question asked you here, I would hope you would answer him right away about these two questions.

Admiral BUSEY. Yes, sir, I would be pleased to.

[The information referred to follows:]

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS OF FAA

Question 1. Given the current circumstances what would the FAA's position be to regulating or even banning helicpter flights over the site of the Kilauea disaster?

Answer. The FAA appreciates the concerns of those individuals living and working near the site of the Kilauea disaster. Reports from representatives of the National Park Service (NPS) and the volcanologists doing research near Kilauea suggest that the overflights of this area by tour aircraft and helicopters may hinder the lava flow containment attempt and endanger the safety of the researchers. For these reasons and pursuant to FAA regulations Section 91.137 (14 C.F.R. 91.137), the FAA is examining the necessity of establishing temporary flight restrictions around the Kilauea disaster area to restrict the types of flights which will be permitted to fly over that area. Flights would be restricted to protect persons and property on the ground, and other aircraft that might be assisting in the containment attempt or in research.

Further, under sec. 9124 of the recently enacted Aviation Safety and Capacity Expansion Act of 1990, the FAA will issue regulations, as may be necessary, to regulate overflights of inhabited areas of Hawaii which have been declared national disaster areas.

Question 2. P.L. 100-91 authorizes the NPS and the FAA to study the effects of aircraft overflights on the resources of several national parks. Specifically included in this study were the Volcanos National Park and Haleakala National Park in the State of Hawaii.

What is the current status of these studies involving Haleakala and Volcanos National Parks? And if they have not been started, when does the FAA and the NPS anticipate that these studies will be completed?

Answer. In response to P.L. 100-91, the NPS, U.S. Forest Service, and the FAA have been cooperatively studying the effects of aircraft overflights on the resources of Haleakala and Volcanos National Parks. Data has been gathered concerning the effects of aircraft noise on the use of the parks. The FAA estimates that conclusion of these studies will take approximately one more year.

Senator FORD. Thank you. We have now been joined by Senator Kerry.

Senator KERRY. No, Mr. Chairman. I am anxious to have an opportunity to hear the next panel.

Senator FORD. I have no further questions, and if my colleagues do not, we thank you very much, gentlemen, for your testimony and we will be back in touch. And I will look for that answer this afternoon, Ambassador, good or bad.

The next panel of witnesses will be Paul S. Hudson, who is chairman, Families of Pan Am 103/Lockerbie; and Mr. Bert Ammerman, president, Victims of Pan Am Flight 103.

Welcome, gentlemen, and Mr. Hudson, if you want to start with your testimony, you may proceed. And would you identify those at the table with you? Are they joining you, Mr. Hudson?

STATEMENT OF PAUL S. HUDSON, CHAIRMAN, FAMILIES OF PAN AM 103/LOCKERBIE; ACCOMPANIED BY ROSEMARY WOLFE, ALEXANDRIA, VA.; AND MICHAEL R. LEMOV

Mr. HUDSON. Yes, Mr. Chairman. I am joined by Rosemary Wolfe, a stepmother of Miriam, who died on Pan Am 103, and our counsel, Michael Lemov.

Senator FORD. Thank you very much. And Mr. Hudson, if you want to proceed.

Mr. HUDSON. Before I begin, Mr. Chairman, I would just like to request your permission and indulgence to have displayed this board here. I think it is important as we discuss the details and even the technicalities of this legislation that we also keep visually always in our minds why we are here.

It is, of course, the protection of innocent civilians such as those who died aboard Pan Am 103. And we owe them a debt in the sense that if anything is accomplished here as a result of these proceedings, it will have been their blood and sacrifice that made that, at least in large measure, possible.

Mr. Chairman, members of the subcommittee, my name is Paul Hudson. I am chair of the Families of Pan Am 103/Lockerbie and the father of Melina, age 16, who was lost to us on December 21, 1988, along with 242 other passengers, 16 Pan Am crew members, and 11 citizens of Lockerbie, Scotland.

The Families of Pan Am 103/Lockerbie is an organization of 170 surviving family members of persons killed on Flight 103 and four families of those lost on the French UTA plane in September, 1989.

Our organization's purpose is to ensure that the pain and loss that has befallen all of us will not again blight the lives of our fellow Americans. This is the standard by which we have evaluated S. 2822, the Aviation Security Improvement Act of 1990.

Before I begin my specific comments, I would like to thank you, Chairman Ford, Senator McCain in particular, for holding this hearing and we hope quickly reporting and marking up the bill.

Mr. Chairman, we testified on H.R. 5200, the House version, in July and we noted there were certain shortcomings in that legislation. We submitted several amendments which we believed would strengthen aviation security.

As we testify this morning, we are pleased to tell you that the House bill is a much better bill now than when it was originally introduced. At the beginning of the legislative process, S. 2822 and the House bill, H.R. 5200 were identical. However, significant improvements have been made to the House bill which we are wholeheartedly supporting.

These changes include requiring the FAA to issue regulations requiring foreign carriers to provide the same level of security as provided by U.S. carriers; as you know, Senator, at least half the Americans travelling abroad do so on foreign carriers, particularly those landing in the U.S.—there is no reason to have a double standard; secondly, requiring income tax relief for the estates of persons killed on Pan Am 103 for the years 1987 and 1988; thirdly, requiring the Secretary of State to publish and post the availability of rewards for information relating to international terrorism; and finally, striking language that would have required cooperation and approval of a foreign government in order for U.S. security regulations to apply to U.S. air carriers abroad.

In addition, the House bill already had certain important changes in existing law, including the establishment of a position of Assistant Secretary for Transportation, Security and Intelligence; establishing the position of Assistant Secretary—excuse me, Assistant Administrator for civil aviation security; requiring foreign security liaison officers and Federal security managers to be stationed within 2 years at each high-risk airport in the U.S. and overseas; an implementation of an expedited R&D program for equipment to meet terrorist threats within 36 rather than 60 months—all amendments which were requested and supported by the families; and finally, and most importantly, a provision requiring that the FAA guidelines ensure—that word was inserted in the House bill—notification to the public of threats to civil aviation.

Now turning to the Senate bill, we were earlier provided a staff draft of S. 2822 and we understand that this is not the official subcommittee position as yet. However we would, with your indulgence, like to comment on it so that there would be some substance on the record.

We believe it is weaker than the House bill, and also, unfortunately, weaker than the original Senate bill in the following areas: it fails to establish the Assistant Secretary for Transportation and Security position; it does not provide for stationing of Federal security managers or foreign security liaison officers; it would delay the R&D of bomb detection devices for up to 60 months; and it also fails to provide tax relief to the families of the victims of Pan Am 103.

As modified in the staff draft, S. 2822 will not, we believe, achieve the purpose of avoiding to the maximum extent possible, future terrorist bombings. S. 2822 needs to be further strengthened. However, in evaluating the staff draft, it is obvious that some changes were made on the positive side.

And we would support, particularly, requiring foreign carriers flying to the U.S. to have the same or equivalent security requirements as U.S. carriers in foreign operations; secondly, broadening negotiations between the President and foreign governments relative to improving aviation security; and thirdly, restricting U.S. landing rights to foreign carriers that require passenger manifest information as a condition for passenger boarding.

However, we believe the Senate bill must be improved by conforming it to the House bill, and adopting two additional provisions of major importance to the families and the public.

Those are, first, to amend section 9 to ensure that a demonstration program deploying enhanced X-ray and bomb detection equipment is established immediately at selected high-risk airports; that a time frame is set for full deployment of bomb detection equipment, and that the standard for approval is slightly modified; and secondly, to amend section 4 to require a full review of the security regulations known as the Air Carrier Security Program, with public comment and a report to Congress.

Mr. Chairman, this morning you have a bill before you that is a step in the right direction. However, the bill still precludes the deployment of advanced bomb detection devices known as TNA.

Even more damaging, it would not require deployment of any alternative devices, nor require any heightened security procedures in their place. This provision alone, which is an inexplicable backward step for aviation security, is enough to raise serious questions about the legislation.

In addition, we believe that some key provisions of the House bill which have been deleted should be restored. S. 2822 contains no requirement for the stationing of security liaison officers at high-risk airports.

This position is crucial to the coordination and implementation of FAA security procedures at foreign airports and the communication between the FAA and the host government. We had some very serious examples of that in the commission report, not only in the Pan Am 103 case, but in a number of incidents that occurred subsequent to Pan Am 103, that the commission had examined in quite some detail.

We believe that by requiring this position in the bill, coordination among the FAA, U.S. carriers, and host governments would definitely improve.

Although this legislation requires the administrator to establish guidelines for public notification, it does not provide a time frame for establishment and implementation of the guidelines.

Furthermore, the bill does not include language requiring notification of flight and cabin crews of an air carrier flight of threats to the security to such flight. This provision was added to the House bill. We believe it should be added to the Senate bill.

We hope that you will also follow the House in adopting an income tax benefit for victims of Pan Am 103. This provision would provide tax relief for the years 1987 and 1988 to the estates of those who died on Pan Am 103.

Only U.S. Government employees who were on Pan Am 103 are now provided with this relief. The intent of this provision is to treat equally all the families of the victims of Pan Am 103.

Mr. Chairman, we are also very concerned that this legislation is not being supported by the administration. Recent communications by the Departments of Transportation and State have, as you know, voiced opposition to the legislation.

The administration believes that many of the changes necessary to improve aviation security, as recommended by the President's Commission on Aviation Security and Terrorism, can be handled administratively.

We do not concur with this view, and believe that only legislative requirements will ensure the new programs needed and prevent any backsliding in the future. We are, however, in agreement in general with the administration's objections to the TNA provision in the current Senate bill.

The administration also opposes establishment of a position of Assistant Secretary for Transportation and Intelligence. As I stated earlier, we would like to see that position established.

We are very troubled by this continued position of opposition and we would urge that the Secretary call on the President to reverse the position of the administration and to work actively with this committee and other committees of Congress, to ensure that a bill is marked up and reported in this session.

In summary, Mr. Chairman, we believe we can support the House bill which was passed on this past Monday, October 1, as amended with two additions. They ARE. a requirement for placement of enhancement X-ray and bomb detection devices at some high-risk airports now; and secondly, requiring a full review of the air carrier security program with public input and a report to Congress.

We urge prompt reporting and floor action on this bill, and we urge the administration to support this legislation and fulfill the promises made to the families of the victims of Pan Am 103.

Mr. Chairman, it has been 21 months since we faced the horror, and we now know probably avoidable tragedy, of Pan Am 103. It has been 5 months since the President's Commission on Aviation Security and Terrorism issued its very damning report on the state of U.S. aviation security, both before and after the Lockerbie bombing.

It has been, Mr. Chairman, 2 months since Iraq invaded Kuwait and brought on a new wave of terrorist threats against U.S. aviation. It has been about a week, Mr. Chairman, since we have now seen published very specific threats against U.S. aviation relating to the air embargo of Iraq.

I saw in the paper this morning that the terrorist Abu Abbas has been quoted as saying that if any Iraqi aircraft is damaged, that there will be retaliation against U.S. aviation.

American troops, Mr. Chairman, are on the front lines, but it is clear, I think, from the Pan Am 103 case that innocent civilians, particularly Americans traveling abroad, are also on the front lines, and we would ask that you keep this mind as you work to mark up and report this bill.

We look forward to working with you and would also like to thank Senator Kerry for his concern that he has shown over these many months that these matters have been considered in the Senate.

We would be pleased to respond to any questions you may have.

Senator FORD. Mr. Ammerman.

STATEMENT OF BERT AMMERMAN, PRESIDENT, VICTIMS OF PAN AM FLIGHT 103

Mr. AMMERMAN. Thank you, Senator. We appreciate the opportunity to come before you today to discuss the Senate bill. We were fortunate, in April of 1989, to testify in front of Senator Kerry's subcommittee on foreign policy and terrorism and we want to thank him publicly for his support throughout this whole odyssey down here in Washington, D.C.

I concur with your remarks that you made earlier to the State Department. Ambassador Busby is most likely the best one they have sent up in a year and three-quarters. I do not know how you put up with this on a regular basis. I would have to come down once every 2 or 3 months to hear the doubletalk and I thank you for allowing him to testify for us.

I think the hearings really can be summed up in one word, in this legislation and the legislation that was passed in the HOUSE. accountability, accountability, accountability. It is very obvious from Admiral Busey that he concurs with the foreign security managers. He just does not want to be held accountable for it. He would like it to get lost in the maze of the FAA.

He makes the statement that they work well with the airlines, yet the Presidential commission's report that came out on May 15, 1990, clearly stated that 6 months after the downing of Pan Am Flight 103, with an FAA inspector in writing putting the security at Frankfurt was no better than December 21, 1988, and Americans were still flying at great risk.

It was not until September of 1989, when Admiral Busey met face to face with Mr. Plaskett, the Chairman of the Board of Pan Am, and finally, I guess, talked about this elusive certificate that he mentioned to you, that Pan Am executives and FAA people went over to Frankfurt and within 1 week the security system was straightened out.

If we believed what we were told in March and April of 1989 by the respective agencies that have testified in front of you today, the Presidential commission would not have been formed, the legislation would not be presented in front of you today, and we would not be here at these hearings. And yet we are being asked, almost 2 years later, to believe them that now they are going to the job.

It is amazing to listen to the turn in their testimony. When they first testified, it was they did everything right. Now it is they appreciate the families, that the families extending themselves and helped them in their cause with all their task force, and yet now we should trust them.

And I think, Mr. Chairman, you can understand that we have a difficult time dealing with that at this particular point. Who knows? In 2 or 3 years, there might even be a Democratic administration in place and all the guys that you saw here today, they are gone.

I congratulate Ambassador Busby. He has lasted quite a long time. In our year and three-quarters, we have been with three of them, and we do not know if he is going to be here next week. He might get a consultant job.

Secretary of Transportation Skinner, who we admire and what he has done—I hypothetically, at Chairman Oberstar's hearing in September, said who knows? He might become attorney general. And last week I read in the paper that he has his hat in the ring for the attorney general, even though it is not open.

And so we have learned a lot about Washington, D.C.

Senator FORD. How about Governor of Illinois?

Mr. AMMERMAN. That is a possibility. So we have to have some legislation so we can take the people that succeed these gentlemen and make sure that what we have done and what we have worked for will take place.

With that, Mr. Chairman, I will read the testimony that I have. The chill morning of December 21, 1988, was filled with the promise of the upcoming holidays and the joyful reunion with our loved ones who were flying home on Pan Am Flight 103 that evening. All too soon, anticipation turned to horror as each of us heard the news that Pan Am Flight 103 had gone down over Lockerbie, Scotland, as a result of a terrorist bomb.

In the 21 months since that day, you have come to know many of us personally and the majority of us under the name the Victims of Pan Am Flight 103. The president of the Victims of Pan Am Flight 103, as president, the single largest and most representative group of victims' families, I am proud to sit before you in that capacity today and acknowledge the efforts of all our families.

We have learned to work the system as it exists in Washington. Slowly but surely, we have chipped away the tough exterior of Government in order to get to the heart of a problem that goes much deeper than the destruction of one 747, the taking of 270 innocent lives, and the fracturing of hundreds of families from 21 countries.

The problem is terrorism, and its rage is growing. Terrorism is a cowardly form of war. Countries such as Iran, Syria, of which Secretary of State Baker, in his wisdom, decided to visit a couple of weeks ago, a State-sponsored country of terrorism, who is giving sanctuary to the man that is alleged to blow up Pan Am 103—and we are supposed to trust them. Libya, and now Iraq, are using terrorism as a scapegoat in order to carry out their heinous crimes against society.

The work of our organization has only just begun. With the report issued by the President's Commission on Aviation Security and Terrorism and the resulting bill entitled the Aviation and Security Improvement Act, our goal is to effect changes in airport and airline security, and this is slowly becoming a reality.

The President's commission and the House bill just passed this week, H.R. 5732, have acknowledged and validated our efforts to move the public will towards a tougher stance against terrorism. But moreover and more importantly, there must be a congressional and an executive will working in concert to keep the terrorist threat in the forefront of this Nation's agenda.

We, the Victims of Pan Am Flight 103, expect to be the Nation's watchdog, now and into the future, to guarantee that this happens. This new legislation is instrumental in initiating change. Time after time, our families have sat aghast as we heard FAA officials testify that the Helsinki warning was the only warning, until it was uncovered that there were nine additional security bulletins relevant to Pan Am 103.

We listened in horror as Pan Am's director of security testified that he did not know anything about it when asked about security in certain areas, most notably Pan Am's Frankfurt station. We were infuriated when we heard the State Department officials posture themselves in a role of efficient competence, when we clearly knew that their performance was deplorable.

This is why we are here today. Government, through legislation, must take responsibility for the well-being of its citizens. The President's commission report is the most comprehensive, insightful information available to date on the incidents surrounding the hows and whys of the bombing. This legislation, intended to implement the recommendations of this commission, has begun the long overdue process of improving air travel for Americans. The Victims of Pan Am Flight 103 endorses H.R. 5732 as written and passed by the House of Representatives.

We cannot, however, endorse the Senate working draft as was presented to us just 2 days ago. And we make the following recommendations, Mr. Chairman, for your consideration.

Firstly and most importantly, the elimination from the Senate working draft of the Federal security managers of high-risk airports strikes a lethal blow to this bill's framework of responsibility and accountability, and clearly violates the intent of the Presidential commission to strengthen the security chain of command.

This legislation was purposely fashioned into a pyramid of responsibility and accountability beginning at the apex with the director for the Office of Security and Intelligence at the Department of Transportation, broadening out through a similar office at the FAA, fanning out to the Federal security managers, extending to stricter requirements for baggage handlers and security employees, and, finally, screening of mail-in cargo.

To undermine the middle echelon of responsibility and accountability, the Federal security managers virtually destroys the integrity of this bill. These managers were to serve as a focal point for authority over matters relating to aviation security within a facility.

The Presidential commission report clearly stated that the FAA resources currently in place at the major domestic airports, as well as overseas, should become the accountable entities for security, namely, the Federal security managers. The report concluded the Flight 103 story best illustrated the need for this presence, and moreover and most tragically for us, such a Federal security manager could have played a key role in Frankfurt and London to ensure that proper measures were being implemented before the ill-fated flight.

Our position remains firm and resolute on the need for Federal security managers.

And, in addition, Mr. Chairman, in a magazine that's given out, Counterterrorism and Security Bulletin of July and August, Mr. Robert Bauter from United Airlines, director of operational security, makes the final statement: "Regretfully, a good many jurisdictions and authorities seem to take a perverse pleasure in blocking or delaying badly needed security measures, and terrorists are not likely to wait for them to get their acts together."

In addition, in a magazine that comes out called the Frequent Flier Pocket Guide, the October magazine, the following statement is made to support our stand: " Somebody has got to be responsible for coordinating and integrating security activities locally, said Lou Turpin, director of San Francisco International Airport."

In a recent article in the highly respected journal Aviation Week and Space Technology, Turpin writes: "The airlines conduct their security activities unilaterally with the FAA, as does the airport owner, in the mistaken belief that the FAA will somehow integrate, collate, and relate this information to the benefit of the traveling public."

Secondly, it is our contention that 60 months or 5 years is too long to wait for new equipment and procedures needed to meet the technological challenges presented by terrorism. We would recommend that 36 months be considered as sufficient time. This is in the House bill.

It has been clearly demonstrated in testimony before the Presidential commission that even 9 months after Lockerbie the security of Pan Am Frankfurt was still negligent. The specter of another terrorist bombing looms larger on the horizon with each passing day.

Thirdly, in all previous versions of the Aviation Security Improvement Act of 1990, the State Department's role in providing assistance to the families of U.S. citizens who are killed in terrorist incidents abroad was not limited to just civil aviation.

The intent of the President's commission was not to guarantee the services of the counselor affairs department just to Lockerbie-type disasters only, but also to the Klinghoffers of the Achille Lauro, the Buonocores of the Rome airport bombing, and most recently, in contradiction to the testimony you just heard about the State Department being on track with their help to citizens, the Michael Sabas of the Iraqi invasion, who said he got no support at all from the State Department in trying to get out of Kuwait and out of Saudi Arabia.

It is the duty and the obligation of the counselor division to come to the aid of all United States citizens involved in any terrorist incident, not only those involving civil aviation, and we applaud Senator McCain in making his statement that they are public servants. They are not bureaucrats to look at us as a statistic.

Fourth, the specific exception which allows the FAA to suspend its security rule for a U.S. carrier if the host government causes difficulties is too loosely worded and goes cross-purposes to the intent of the bill. This is a definite loophole in the security framework which this bill is supposed to ensure.

And in regard to mail-in cargo, it has become so watered down that it virtually accomplishes no security impact. Our only hope in this particular incident is that the FAA administrator will develop a strong and responsible rulemaking proceeding on the screening of mail-in cargo. But we will go on record as labeling this possibly the most, the weakest link of the entire bill.

Finally, the last part is just an offensive statement that we feel has been directed towards us that we want you just to be aware of. It is offensive to us to see the tort claims liability disclaimer under selective notification section. The expectation of this bill is to ensure that everything that can be done is being done to guarantee safe air travel for the flying public.

It is common knowledge that the Government secures itself in a myriad number of ways so that it cannot be drawn into suit unless it chooses so. To reiterate that in this bill is an affront to the families.

Our group, the Victims of Pan Am Flight 103, just this past week completed a 2-day lobbying effort on Capitol Hill. Our families, about 60 strong, in those 2 days, were pressing for the swift passage of the Aviation Security Act, which is a direct mandate for the recommendations of the Presidential commission.

We were rewarded by the passage of H.R.5732 on Monday, and now we urge this esteemed committee to speed the passage of this bill by reconciling it with the House bill and bringing it to the floor of the Senate before adjournment.

It has come to our attention that the Departments of State and Transportation are opposing this bill. In fairness, we recognize and applaud the immediate efforts of Secretary Skinner in having already implemented administratively the commission recommendations. This does indicate a commitment on the part of the present Department of Transportation to give security top priority. However, when Secretary Skinner leaves office, for whatever reason, we must be assured that this priority stays in place.

The Victims of Pan Am 103 are heartened and gratified that Government has indeed learned from this preventable tragedy, yet terrorism and how it relates to airline safety is an ever-changing phenomenon that requires the constant vigilance of our nation's leaders and legislators.

This bill, Mr. Chairman, as important as it is, should not be perceived as the final solution, but rather as a beginning to an affirmation of our Nation's will to fight terrorism and preserve the unalienable rights of its citizens above all.

In conclusion, as for our part, those of us who have lost our loved ones, we have taken as our own the words of the esteemed Senator Hubert HUMPHREY. "Life's unfairness is not irrevocable. We can help balance the scales for others, if not always for ourselves."

The passage of this bill will truly mean that our loved ones did not die a senseless death. Thank you, Mr. Chairman.

Senator FORD. Thank you, Mr. Ammerman. I think that both Senator Lautenberg and Senator D'Amato are respected by their colleagues. They are from each side of the aisle. They served on the commission and they have attempted to introduce a piece of legislation that we would presume would carry out the mandate of the commission.

Apparently, from the testimony of you and Mr. Hudson, there are some changes. You endorsed the bill that has been passed by the House, and yet Mr. Hudson, as I understood your testimony, has several changes in that legislation that you would like to have.

We find ourselves in what is normally a bad position, that is the minority is running the Senate. We get 65 ayes and 35 nos and the nos win. It is not a very good position to be in, and so when you find the Department of Transportation and the Department of State and the Justice Department all having concerns about this legislation, you run into a particular problem on our side that would not necessarily be a barrier on the House side.

I am not complaining, but since you have worked through the system, as you said, you understand it better today than you did before. And it may be good in some respects that you understand the system, and we ought to change it a little.

So, Mr. Hudson, let me ask you a couple of questions. And I am trying to do this to fill out maybe the testimony as it relates to the Senate bill. I think the staff draft is somewhat better than the original bill, but we have not gone far enough yet to match up with the House bill. But, Mr. Hudson, why do you believe that citizen or public review of airline security requirements is desirable?

Mr. HUDSON. Mr. Chairman, one of the basic messages that we see in the commission report is that the security regulations are too weak that we have at present.

Senator FORD. Now are you referring to the House bill, basically, there?

Mr. HUDSON. I am referring to the commission's finding that, in general, FAA security regulations, both before and after Lockerbie, were too weak, and they were ill-coordinated, they were flawed. These are all words taken from that report.

To have legislation, which is the principal response to that report, not include a thorough review of the existing security regulations or to include a review of, only at the option of the administrator, with no outside oversight, with no public input, would, we feel, not carry out that basic message.

The regulations, after all, themselves are secret. There is no, there is no public oversight in the normal sense, because, obviously, the details of many of these regulations, if they were released, would be of help to the terrorists. So we are simply saying is that, and we have suggested a number of mechanisms for that, that there needs to be a full review of those regulations, and an oversight through a report to Congress.

We cannot simply trust the FAA to do this job after the findings of the commission report.

Senator FORD. Some things, Mr. Hudson, as it relates to the security of not only the airline industry but this country, are not too wise to be made public. And we tread on a very thin ice, I guess, to use a better term, that we have to be selective in some of those things.

If you make it all public, then everybody, as you said, has an opportunity, even terrorists, to know what we are doing and that gives them opportunity to alter that. So it makes it a little bit tougher to make a decision as it relates to——

Mr. HUDSON. Mr. Chairman, we are not advocating complete public disclosure. If I could, with your indulgence, give you an example of something that occurred in March of this year.

After a spate of negative publicity about the training and the type of people that were acting as security officers at airports in the U.S., the trade association, the ATA, the Air Transport Association, went to the FAA and asked them to tighten up the selection and training standards. This was done privately.

The regulations, as we understand it, were tightened and such things as requiring these officers to have a high school diploma, not to have a criminal record, to have more hours of training, were rubber stamped and implemented by the FAA. The only way that that was disclosed was when the ATA, after this was done, issued a press release and they announced what was in effect, the substance of the secret regulations.

Now it may be that knowing whether someone is a high school graduate or not, or whether he has a criminal record or not might be a regulation that you would want to classify and not have the terrorists to know about. I tend to doubt that.

Senator FORD. I do, too.

Mr. HUDSON. And I think that that process would have been greatly assisted had there been some opportunity, even very limited, for there to be public comment, by victims' groups, by consumer groups, by others of the general public, who have, after all, are the real parties at interest in aviation security.

Senator FORD. For all regulations, normally there is a time for public comment when it is issued publicly in the record. And so new regulations, as it relates to security, would not, I mean, they would have to comply with that, I think, Mr. Hudson.

Mr. HUDSON. The air carrier security program, I believe, is an exception.

Senator FORD. I think that is correct, because of the word security. Now let me ask you one other question that I am concerned about, and I think it needs your testimony, it needs to be filled in for the record. You have alluded to it and maybe we need to zero in on it.

But I am concerned about mandating the implementation dates for equipment, some equipment that has not been developed yet. And I want you to help me here a little bit. Are you aware of new technology that can be deployed within 36 months?

Mr. HUDSON. We have a program that started long before the Lockerbie bombing, sponsored by the FAA, to develop bomb detection equipment. I believe it started in the mid-1980's, around 1985. Prior to the Lockerbie bombing, the federal government ordered six bomb detectors. They had started testing them in the fall of 1988, several months before the Lockerbie bombing.

To date, only four of those machines, we are told, have actually been installed in airports, nearly 21 months after the Lockerbie bombing. No airline has ordered a single machine and there are at least two of them that were ordered by the Government over 2 years ago, they are sitting in warehouses waiting to be deployed.

There needs to be some impetus to get, not new technology, but technology that was existing at least 2 years ago, at least out for demonstration purposes. We are told that now there are new generations of this equipment that are in testing right now, but we have not really demonstrated thoroughly even the first generation.

And I think what legislation can productively do is not to guarantee that the perfect machine will be installed, but is to provide a step-by-step process by which we can get from A to Z.

That is, we can get from the present situation, where there is virtually no bomb detection equipment at all, analogous to the situation we had in security of antihijacking prior to any metal detectors being installed, prior to any x-ray machines being installed, to a point where we can have at least reasonable confidence that to a level that the FAA determines appropriate. I believe, in the hijacking area, is approximately 90 percent of test weapons that are required to be detected by the equipment.

In order to get to that level of credibility and confidence, it is very clear to us that the legislation has to provide for some benchmarks, it has to provide for some milestones, with the best available technology we have.

If the—if the bill were enacted as originally introduced in the Senate, bomb detection installation would be put off indefinitely, perhaps for 5 years, because there is an absolute prohibition on deployment of bomb detection equipment without an array of certification and outside approval processes.

It would be similar, we think, to the situation with airbags, where it was put off for 10 years or more. However, even in that case, at least the department went for seat belts. Here, in the original draft of the Senate bill, there is no alternative provision.

Senator FORD. Mr. Ammerman, would you like to follow up on that last part there where we discussed S. 2822, which you know gives 60 months to deploy TNA technology. Do you agree, or would you believe a shorter period of technology is possible?

Mr. AMMERMAN. We believe that the shorter period of 36 months is very sensible and very feasible. We have been sending representatives from our organization to each of the FAA workshops and conferences and talked to scientists and manufacturers, and the feeling that we have gotten in talking to the experts is that a 36-month time frame is reachable. 60 months is 5 years, and I agree with Paul on that.

What we did, Mr. Chairman, and it is amazing to listen to different people testify, I mean, Ambassador Busby applauded the Presidential commission on the Helsinki warning, because that part helped the State Department on the Helsinki warning.

And yet other aspects are no good. Admiral Busey applauds what he likes and what he wants, and then he wants the others put out. The Presidential commission spent 6 months investigating this whole issue and put out a report that the President endorsed, and the President told us on May 15, 1990, that this was not going to go on the shelf.

I understand the system in Washington, D.C. We endorsed the House bill and we had a hearing like this, and the staff—and I know your staff has been doing an outstanding job. We have been in contact and talking and trying to work it out. We realize there are certain aspects that possibly cannot accommodate the administration.

But what we are asking for and what is in the House bill and in just a little bit more working with your outstanding staff, is a merit bill, and what we are saying is, let the bill fail or pass on its merits.

I find it incomprehensible that the President of the United States, Mr. Bush, if this bill passes, will veto this bill after he commissioned the six individuals and applauded the individuals' work, and this bill just reflects what he asked for and what he got. So therefore, if he did veto this bill, maybe he will say, watch my lips. I do not know. But I just do not see that taking place.

The TNA machines, the commission said, at this moment, would be throwing good money after bad. And you Senators know, with your budget, that we do quite a bit of that down here in Washington, D.C. And you are trying to tighten up on it. We would reluctantly agree with the commission, but put a time frame on, continue working, and we guarantee you we will watch it.

Senator FORD. Of course, since you have learned the system, you know that even though the administration may agree to it, appoint the commission, and give it fine lip service, if they do not want it, you slow it up, and you have chocks put in the road, and it is up to us to try to get over that.

And that is where I get back to the minority who controls the Senate——

Mr. AMMERMAN. Mr. Chairman, they tried that on the House side——

Senator FORD. I understand——

Mr. AMMERMAN.——and you know, it did not work. This is a bill that I think is a different bill than the normal process in the system. We are dealing with a bill that is being presented based on the massacre of 270 people. And if any political party would resort to those type of tactics, they are going to have to live with that, and we will make sure that the Nation realizes what is taking place.

Senator FORD. The House is run by a majority.

Mr. AMMERMAN. Yes.

Senator FORD. One final question and I will turn it over to my good friend. I apologize for taking so long, but I think these are things that should be in the record, and we are discussing it as friends and trying to work out the best we can.

I asked Admiral Busey this question, and maybe I will ask it of you just a little bit different. How do you envision the Federal airport security manager working with the airport manager in a crisis? Who do you think should be in charge of the airport?

Mr. AMMERMAN. I can answer that with an example. We are not naive to believe that the federal security manager is the cure-all to the security of the airport. We know that when we travel overseas, the airlines identify, oh, here come the victims of Pan Am Flight 103, make sure you ask the right questions.

When I fly to different airlines, they identify me. I get the best security in the world when we go over. So when you identify an airport, I think the airlines will know who the Federal security manager is.

But the importance of the Federal security manager, and Admiral Busey said this to you, he has the responsibility to stop a flight. Now the question that I would have asked the admiral, if I had the opportunity, is how many flights were stopped in 1989? How many flights were stopped so far in 1990? That is not broaching security with the numbers.

And where is he? I thought you brought up a good point. He is not there, and he himself said, with the amount of security managers, they could not all report directly to him, so here we go with the bureaucracy. I will put them down to one or two of my underlings, we will work through three or four more, then when something happens we will be back here and your heads will be spinning again trying to get answers.

I believe that the Federal security manager should work in concert with the airport manager, and if the FAA Federal security manager feels there is a violation, try to work it out with the airport manager, and if that fails, to report immediately to Admiral Busey that action must be taken.

And I think that really tightens up the system and it does make it better and it is a step forward.

Senator FORD. Thank you, Mr. Ammerman. Senator Kerry?

Senator KERRY. Mr. Chairman, thank you very much. Mr. Chairman, also, I thank you for having this hearing. I think it is a very important one and I am delighted to be able to yet again hear some of the constructive thoughts with respect to legislation that grows out of that tragedy.

I would personally like to again thank all of you for your efforts. I think it is most appropriate that the board here, with pictures of lost loved ones, is put in front of us because you are really carrying with you a very special kind of mission here. And I think you have all been extraordinarily true to their memory and dedicated to this effort, and I think you have made a tremendous contribution and are continuing to do so, I might add.

I think that Government has a sad way of not responding to a lot of different things, not just this particular one. Bureaucracies become Alice in Wonderland to the nth degree in their ability to find reasons not to do simple things, straightforward things.

I remain extraordinarily disturbed by the level of security in the airports, not just in this country, but around the world. It is as if we have not learned anything. There have been some improvements, yes, and there are some places tighter than others, yes. But there is no question in my mind that there really is not a system and there really is not the kind of institutionalized concern that ought to exist, given what we have learned.

The reason that aircraft are not being blown out of the sky today is not because security systems are preventing it, but because terrorists do not find it in their interest at this particular moment to do so. But at any such moment that they decide it is in their interest, it will happen.

And when it happens, we will sit back and say to ourselves, we have got to have a commission or we got to study this and see how we prevent this again, and there will be the same furor and maybe a few heads will roll because it will be perceived that suggestions made were not adopted.

I do not think that is satisfactory. I am more than familiar with this issue, not only because as chairman of the Terrorism, Narcotics, and International Operations Subcommittee—we have had hearings on it which you alluded to—but because I have been working very closely with a company in Massachusetts, Thermoelectronics, which has developed a bomb detection system and I have watched the struggle we have had with the State Department, with the FAA and others, in the effort to just get it tested, to get it adequately put into the system.

And there are 25 different excuses and reasons why people do not want to do it. The only airline you are really safe on if you are really flying with the consideration, with respect to terrorism, is El Al, and that is because they take the pains to guarantee, indeed, that there is a process that is put in place.

So, you know, I am frustrated and I share some of your frustration. Now I also share some of Senator Ford's concerns about how you get something through here, about the realities of this process, as damning as they sometimes can be, and about the need to balance a little bit here.

And as I look at the staff draft and at S. 2822, I must tell you, I think the staff draft is not, you know, not as damnable as perhaps some would believe. I think there are an awful lot of similar provisions in it, and there are some compromises which I am not convinced compromise our ability to enhance security and move forward.

So let me ask you this question. If you were to pick, perhaps, maybe one and then two most important points of departure between S. 2822 and the staff that you believe will really enhance security and have an impact on this, what do you think they are?

Mr. AMMERMAN. Senator, I think I can say that I do not think we are that far apart. I think you hit on the situation what the House bill and what the staff rough draft was. I think with a little bit more work that there will be a bill that is acceptable to all, and I think it is a—this is a major positive step forward. So it is not a major schism.

Ours is—and this is the first time our organization really put our hind legs up and said no. We had been working through this with Transportation in many discussions, State Department, and with these House staff on the House side, and the Senate.

As the Federal security managers, we feel that that is an important ingredient in the process, and if that was included into the Senate bill and reconciled in a quick conference with the House bill, I think we could have movement for passage.

The other items are concerns. I really do not think—it is not—it is 60 months to 36 months, I do not think it is a major issue. I think that can be acceptable to all. But if you were asking me, that would be the one area.

Senator KERRY. That is the single greatest concern? Because I noticed that most of the rest of the them are either similar provisions or a slight marginal change, such as the permissiveness in screening versus mandatory and so forth.

Mr. HUDSON. Senator, if I may respond?

Senator KERRY. Yes.

Mr. HUDSON. I would say there are several. The number 1 thing I would place is the fact that neither the original Senate bill nor the staff draft contains any language to ensure notification of serious threats. The original bills in both the House and Senate were viewed by most of us as providing for obstacles to notification rather than any assurance that there would be notification.

Secondly, the bomb detection provisions, we feel, must be changed. They were changed in the House to some degree. To quote from the bill, which is the same in both the staff draft and the Senate bill, "no further deployment or purchase of any explosive detection equipment shall be required unless—" and then it goes through a long list of things.

That is an absolute bar on getting the best available technology we have out tomorrow to protect lives, and it is going to bar it for a long time. And when the next plane goes down and we have a bar like that in effect, we will have essentially stopped the best chances that we have through this technology, whether it is TNA or some other device, to have a chance of protecting the next group of people that are attacked with an aviation bomb.

That is, as I understand it, the principal substantive objection, also, of the administration. The House bill was changed to provide for emergency authority, for the administrator to override this long convoluted process in the bill. And we feel that is not adequate because it does not provide for anything affirmative, to get a demonstration program out.

The third thing we feel is really essential is that there be a review of the existing security regulations. Otherwise, when the next tragedy occurs, as you said, we will have another commission. They will examine the security regulations and they will say the same thing as the first commission did; they were inadequate, they were flawed, they were not properly administered.

And since the whole thing is basically secret, we will not know about whether it was even possible, as apparently it was in the Pan Am 103 case, to have avoided the next tragedy.

Senator KERRY. Well, to what degree—and I appreciate that answer. I guess as a traveler, we are all sensitive. There are certain places where the risks are obviously higher than other places, and, you know, if you put everybody, I mean, clearly, if you put everybody through the El Al procedures, you start changing the entire scheduling and time frame and so on and so forth, and people object to that, and people see more money lost, and they see longer time, and so forth.

And balancing that against the threat, I suppose there is a balancing act here. People say, well, I think in their own minds, how often does it happen and so forth. And I think that is one of the difficulties we run into here is that balancing of the sense of threat versus cost, and inconvenience, disruption, and so forth.

Mr. HUDSON. Senator, there is always a balance drawn. We feel right now the balance is down here, and it needs to be up here.

Senator KERRY. Well, let me just say that I think you have well articulated your views and I think you have done a service in keeping people's eye on the ball here. And I am confident that the chairman and others who have been deeply involved in this will try to see if it is possible to incorporate at least those parts of it that could be worked out, and then maybe it will be that the chips will fall where they may or whatever.

Mr. AMMERMAN. Senator, could I just add one more thing before you finish, to follow up on what Paul just said? It is interesting, there is a concern by airlines and a concern by Government that people are flying foreign carriers and not flying American carriers as a result of Pan Am 103.

And there is a reason for that. Our Government did not take a proactive approach as a result of Pan Am Flight 103. Our loved ones were not attacked and murdered. We have a better chance of winning the Lotto than being on that flight.

What took place was the American flag was attacked. And our Government, from the day that happened, never took a stand worldwide to countries that support terrorism or terrorists, saying that this will never happen again.

We all realize security is a perception. We cannot guarantee security 100 percent. El Al has extreme cases; they have 23 planes. But it is a model to look up to, and we should work towards that model, knowing there are limitations.

But I find it incomprehensible, as I have listened for a year and three-quarters to Government officials consistently saying that they have done this and done that, when they really have not taken an aggressive approach, either in the foreign policy arena, or in the arena of airport security, and then tell Americans, fly our airlines.

If you fly Aer Lingus or you fly some other airline to a foreign country, you have a better chance than if you fly an American airline. And that is sad, because we should be highlighting and protecting our American airlines, not worry about the dollar and how it is going to impact on wait time, but what can we do as a Government to tell our American citizens, fly American, and we are not doing that.

Senator KERRY. Well, I think you have made a very telling point. I know countless people who do business abroad and they will fly Swissair, or they will fly on British Air, or Aer Lingus, but they will stay away from TWA and they will stay away from Pan Am and they will stay away from American flag carriers.

I agree with you. I do not know how much business we are losing; I cannot quantify it. But I do know we are certainly losing some.

Ms. WOLFE. Mr. Chairman, I wanted to make a comment regarding something Senator Ford said and something that has been behind all of the discussions we have had, and that is that the commission made certain recommendations in its report, and therefore the Congress, in carrying out legislation, had to, in effect, take those recommendations literally and translate them into the bill.

We were very heartened at the time the commission was created that there were four Congressmen on the commission, because we felt that they could then come back and take those recommendations and make them workable provisions.

I do not think it is enough to say that Senator Lautenberg and Senator D'Amato know what is best. They have been incredible supporters of the families and of legislative efforts. They have done a fantastic job. But we feel that the Congress needs to take those recommendations that were made and strengthen them.

I do not think it was intended that things be taken literally and then just put into provisions. And I think it is the responsibility of the Congress to now strengthen them in whatever way they can in order to get the legislation passed.

And I just want to thank all of you for holding the hearing at this late date. There is not much time to get this before the Congress, but we are still hopeful that this can be done.

Senator KERRY. I appreciate that very much. Are you from New York?

Ms. WOLFE. Yes.

Senator KERRY. I could tell. Okay, I appreciate enormously your last comments and all of your comments. I think it has been very helpful, and with the chairman's permission, I will now adjourn the hearing.

Thank you.

[Whereupon, at 1:55 a.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. BARBARA A. MIKULSKI, U.S. SENATOR FROM MARYLAND

Before the Aviation Subcommittee hearing on S.2822, The Aviation Security Act of 1990

Mr. Chairman, I want you to know that I strongly endorse the passage of this bill. I was one of the first Senators to become a cosponsor of the bill.

I urge you to move quickly on this legislation because the effect of terrorism on society is traumatic. It touches every segment of your nation and the world.

Even as I speak, there are forces throughout the world openly advocating the imposition of death on our citizens through terrorism. We must act now to increase security for our air travelers and airports.

Every passing day without increased security for our commercial aircraft provides terrorists with an open window to strike at our loved ones. We must close that window by implementing the security precautions outlined in this bill. We will never forget the most deadly terrorist act ever directed at American civilians, the bombing of Pam Am 103 in December of 1988. Seven Marylanders lost their lives as a result of this international crime. I have spoken with some of the families of the victims of this terrorist act and they urged me to do all I can to pass this bill this year.

The deep sense of loss caused by this tragic event will always remain with us. The President's Commission on Aviation Security and Terrorism found that the bombing of Pam Am 103 was probably preventable if increased security measures had been in place. This legislation implements the commissions's suggestions on increasing security at our nation's airports.

Again, I thank you for giving me the opportunity to express to the Committee my hope that his piece of legislation is enacted.

STATEMENT OF THE AIRPORT OPERATORS COUNCIL INTERNATIONAL AND THE AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES

This written testimony is presented on behalf of the Airport Operators Council International (AOCI), and the American Association of Airport Executives (AAAE). Together, the two organizations represent the local governments which own and operate most major commercial airports, and the 1800 senior airport executives who run them.

Mr. Chairman, we offer our congratulations for your swift and comprehensive translation of the President's Commission's recommendations into legislative proposals. The bill's parallel tracking of the Commission recommendations, and the speed with which you have moved to achieve their goals, is an indication to the American people of this committee's dedication to the protection of air traveler's lives and property. The recommendations and the resulting legislation will, we hope, lead to a better understanding of, and progress toward, the enhancement of aviation security worldwide.

We have attached the AOCI assessment of the Commission's recommendations. Many of them make eminent good sense. Some of them, while well-intentioned, will require considerable modification before they can be rationally applied to the real world of millions of passengers moving daily through crowded airports.

Before we address the specifics of the legislation, let me briefly discuss the approach to aviation security taken by virtually all experts in the field. It can be summarized as the application of sufficient and appropriate resources to contain the projected threats—threats which are constantly changing.

The threat has changed dramatically since the very first hijacking of a Peruvian airplane in 1930 to drop political leaflets, and the spate of "homesick Cuban" seizures of the late 1960's and early 1970's, yet many of today's security regulations are based on the threats of that period.

Today's threat is different: a terrorist, or group of them, dedicated, fiercely motivated, sophisticated, usually with a political goal, whose plan is implemented against a target of opportunity that will gain them a political advantage or a public hearing of grievances. That might encompass a broad range of zealots.

Relatively few groups are the well-financed, -trained and motivated terrorists (i.e., Lockerbie) we have come to associate with threats to aviation. A major characteristic of terrorism is its random and unpredictable behavior, and the often illogical connection between the terrorist act and the avowed goal. For example, it is difficult to make the connection between the pressure for release of political prisoners, or a demand for media attention, and the threatened or actual death of American travelers or hostages.

Yet such irrational elements lead us toward at least a non- emotional partial answer. Unless and until we make a concerted and relevant effort at identifying the nature and extent of the real threat, much of our current shotgun approach will likely prove to have been a waste of effort and money, with no significant increase in security.

Long experience has shown that the current threat to American interests is concentrated principally on U.S. flag carriers at relatively few overseas locations and, to some degree, at major ports of entry, not at the hundreds of small U.S. airports where comprehensive security is being mandated.

While we cannot ignore threats at other domestic locations, there has been, to the best of our recollection, only one terrorist incident at a US airport—the LaGuardia locker bomb daring Christmas, 1975; nor have there been more than a small handful of hijacks originated from US airports in many years. This might speak well of our evolving security process, but it might also be conforming a diminishing domestic threat, and the diminishing returns of expending serious resources in money and people on what many perceive as a receding domestic threat.

We do believe that some preventive measures should be implemented even at low threat airports. We suggest, however, that until we can evaluate the threats which do exist, a scattershot commitment of major resources is a mistake which accomplishes little in added security.

Your legislation states that "safety and security is the responsibility of the U.S. government." We agree. The bill proposes to begin by establishing a security survey of the domestic air transportation system, to be conducted by the FAA and FBI, with a focus on the "vulnerability of individual airports ...to terrorist activity." However, until a realistic threat analysis is accomplished, a vulnerability analysis is meaningless. The two are not the same: a threat analysis looks outward; it reveals who or what may be challenging the security, perhaps why or how, and what their goals or purposes might be. The vulnerability analysis looks inward, and is important in consideration of the real threat. It tells whether the security system is sufficient to deter that threat, and then it may suggest what system enhancements are necessary or desirable to address the threat. It must look at personnel and equipment, adequacy of procedures, handling of baggage, mall and cargo, control of ramp access by unauthorized personnel, and non-airline facilities (cargo, general aviation, joint military operations, etc.), among other things.

Only after the threat is determined can vulnerability become meaningful, and then a strong security plan can be developed and implemented.

One important aspect of these assessments has been overlooked. The legislation requires that FAA submit a report of the assessments to Congress within one year (we suggest a competent and meaningful job may well take considerably longer), but the only legislatively stated purpose [Section 8(b)] of that report, and thus the only driving force behind its design and focus, is for it to be used to develop airport security construction standards.

The legislation should make the clear connection that these critical threat and vulnerability assessments must precede the development of rational regulations for enhanced security measures. Without threat and vulnerability assessments, the regulations and the security measures they mandate often do not obtain the desired results.

An example of what we believe to be the proper approach is Section 11 of the bill which would enact the Commission's recommendation (with which we agree) to defer the implementation of Thermal Neutron Analysis (TNA) equipment TNA was found by the Commission to be an inadequate explosives detection system in: aviation environment. Yet the requirement for enormous expenses to implement TNA was put into the regulations, and remains on tho books in what may simply be an emotional response to a crisis.

Another industry concern is that although the bill's very first finding acknowledges federal responsibility and authority for aviation safety and security, there is no parallel acceptance of federal liability. The legislation proposes a new Federal Security Manager [FSM] located at the airport, but the bill is silent on the issue of liability for that employee's actions. The bill would provide the FSM with broad responsibility and complete federal authority over virtually every aspect of security at an airport, from development and approval of the security plan to enforcement of day-to-day operational requirements. Yet the carriers and airports would remain legally liable for whatever might result from carrying out the FSM's directives.

Further, the bill provides "priority" placement of an FSM at "high risk" airports without establishing the criteria for such airports, and implies additional placement of FSM's at an undetermined number of other locations. Again, we believe a systemwide threat assessment is required before it can be determined whether FSM's are necessary at all airports, and if so, which ones.

In our opinion, the Commission's recommendation for an FSM as described is not justified. The FSM function as delineated in the bill would introduce another layer of bureaucracy into an already difficult decision-making process. The same purpose would be more effectively served by providing the existing FAA civil aviation security structure with a cleaner line of communications and reporting authority to the new FAA headquarters office of the Assistant Administrator for Civil Aviation Security - a newly established position which we wholeheartedly support.

This new FAA post, and the new Office of Intelligence and Security at the Department of Transportation, already exist. It is these two offices which must develop the detailed proposals called for by the Commission and the legislation, and these two offices which must ultimately evaluate threat assessments, vulnerability assessments, R&D proposals, budget allocations, and industry and government task force recommendations, not to mention the concurrent political pressures which often drive the proposal far beyond time requirements and necessary physical boundaries. These offices must decide which programs make sense, what resources to apply, and must balance the inevitable differences between the public and political perception of need, and the "reality check" of what is truly needed, what really works, and what can actually be accomplished without total disruption of the world's air transportation system.

A negative result of the threat, real or imaginary, is that we spend hundreds of millions of dollars in locking up all the airports while choking traffic flow. Terrorists have achieved disruption without spending a dime or spilling a drop of blood. Enormous world resources are expended, not on real threats, only on the perception of uncertain threats.

How much security is enough? It is true that we can never reach a risk factor of zero; some risk always remains, however slight. It is that balance of risk vs. deterrence which we must seek Does it make sense for airports to spend millions of dollars, and travellers to incur millions of dollars in delay costs, on the obscure chance that one of the two bags per billion (an estimate by the National Academy of Sciences) which might contain explosives will be detected? This, say the Academy experts, is like trying to find a toothpick in a very large haystack The only practical experiment now underway to determine what works is the Sandia Laboratories project at Baltimore Washington International Airport. It is a total systems review of where the airport's security problems are, and what can, or cannot, be done to correct them It involves tests of hardware, software, equipment placement, procedural modifications, and a myriad of new ideas.

The key to the Sandia project is that the people who have been involved in its development and testing are an experienced corps of experts who have an in-depth understanding of security, aviation, statistics and economics. It took many months for them to simply understand how the airport operates. They then began to assess who or what might be the potential threats to passengers or aircraft which are the currently accepted "targets" in most airport security programs. Cargo buildings and general aviation areas are important, but secondary. Only then can Sandia apply their knowledge of security Systems to the problem, evaluate the likelihood of encountering an event, determine the acceptable level of risk, decide which resources are appropriate, and how much security is adequate.

There are a few specifics of the legislation which we feel are important to highlight to this Committee. 1. With all its strength, this bill is weakened without a guarantee of federal funding. To "authorize Trust Fund dollars as appropriate" provides little guidance for what appear to be enormous outlays required to meet the mandates of this bill. There are unquestionably large requirements in terms of day-to-day manpower, three new high level departments at FAA, DOT and State, R&D requirements, threat ad vulnerability assessments at an unknown number of airports, development of new security standards, a multitude of reports, and an extensive addition of unbudgeted duties for existing offices at FAA, State and DOT.

We strongly suggest that the bill first seek specific funding for the critical assessments, which would then be used to determine vulnerability and the real needs and priorities for a more secure aviation environment.

2. The federal government's liability for the requirements it mandates is an important issue. Under this bill, the FSM could impose impossible conditions, require "modifications in procedures, staffing and other areas...", and "provide oversight and enforcement" based on his own concepts of perfect security (which will change from one airport to another). In that scenario, the airports and carriers would maintain the liability for any crisis created by the FSM's errors.

3. The bill would require background checks, and it lists specific violations which would preclude employment. We suggest that checks should be authorized, not required (even the President's Commission suggests such checks only be "enabled"). Of course, aviation authorities should have access to the information, evaluate it, and determine its relevance to the duties of the employment in question There is also the need for access to criminal records worldwide throughout the aviation industry, since US flag carriers hire local people in many nations. There are quite different standards around the world as to acceptable behavior; many foreign national employees might have criminal records for conduct in their country which is perfectly permissible in other countries, including the US.

The bill's language would make it an automatic violation not to conduct such a check, presumably including foreign nations where we usually do not have access to the information. The bill provides an ambiguous exception for security checks done through "approved... alternate security arrangements", but gives no hint of what they may be.

4. The bill's security personnel standards and training section is in general a good proposal, with the exception of the revision to Employment Standards for Security Personnel. It would be extremely difficult to set a federal regulatory standard for minimum local security staffing. The constantly

changing needs as determined by a local threat assessment process should determine the required staffing, not a federally mandated minimum requirement.

5. The Research and Development section requires some clarification as to the difference, if any, between the "intensive review of threats to aviation" called for in Section 9(2)(B) and the "assessment of current and potential threats to the domestic air transportation system" called for in Section 8(a). Much of the review specified, particularly with regard to explosives detection technology, has already been undertaken by the National Academy of Sciences under an FAA project, and by the FAA Technical Center; these should not be re-started from scratch

6. Section 13, requiring the air carriers to screen mail and cargo (3D(c), would create major backlogs. The passenger and air cargo carriers cannot possibly be expected to breakdown ad screen containerized cargo, pre-sorted mail, courier shipments, etc. They haven't the manpower, equipment, time or space to do so universally. To place that process on the carrier's doorstep would defeat the efficiency built into the freight ad mail system over 50 years. The responsibility for maintaining security should lie with those who consolidate or prepare the shipments prior to their arrival at the airport, where they are already being handled several times during preparation.

The Federal Aviation Administration last year formed the Aviation Security Advisory Committee (ASAC), made up of security experts from every facet of government and industry. We recently met twice in full committee to review and respond to the Commission's recommendations, and most of the specialty task forces met several times during the past two months to work on defining many of the specifics in the bill. There have been no less than ten meetings of ASAC's various subcommittees and task forces scheduled within the past several weeks, with mandatory short-term reporting dates back to FAA with some substantive progress expected in providing recommendations for restructuring aviation security to make sense in view of today's high volume airport environment and constantly changing threat. AOCI, AAAE and ATA co-chair the Policy and Procedures Subcommittee which will provide a draft of its mid- and long-range recommendations to the ASAC Committee on October 18.

There are other groups making progress on the topic as well: the Congressional Office of Technology Assessment has a panel of experts at work; the National Academy of Sciences report is due out any day; the FAA's Technical Center has been testing many alternative technologies for years; the Sandia National Laboratories project at BWI is well underway and might expand to another major airport as well. The FAA is pressing the ASAC group very hard and very fast for very specific recommendations on revised procedures, hardware, regulations and/or legislation where necessary.

Many of the bill's proposals are desirable. We ask that this committee let the industry task forces and FAA's ASAC group complete their work in order to provide your legislative staff with improved recommendations. Keep the legislative pressure on the industry and the FAA, but let us provide realistic input to the development of legislation and regulation that will work under real-world airport operational conditions.

To summarize the principal elements of AOCI/AAAE testimony:

1. In accepting safety and security as the responsibility of the U.S. Government, the legislation must provide clearer guidelines on the parallel liability of the government, and more definitive sources of funding for its security requirements.

2. Threat assessments and vulnerability assessments are not the same. The threat assessment must be done first, followed by the vulnerability assessment, an operational security plan can be developed and implemented.

3. There have been remarkably few incidents at US airports over the past 15 years, which could either speak well of our security system, or it could confirm a diminishing domestic threat. However, the potential for new threats at different locations cannot be ignored. The level of risk will never be zero; there will always remain some element of risk which must be balanced against the operational costs.

4. The already existing FAA civil aviation security structure should be carefully redefined to assume many of the responsibilities suggested in the Federal Security Manager concept. Most can be accomplished under existing regulatory authority; an additional new layer of bureaucracy is not justified.

5. Criminal background checks for aviation industry employees should be authorized, not required, with appropriate safeguards of the privacy and civil liberties of the employees.

6. TNA implementation should be deferred. Further R&D into this and other alternative technologies should be heavily funded ad rapidly accomplished. This technology must be operationally acceptable to maintain airport and airline efficiency.

7. Cargo and mail shipments should be screened prior to arrival at the airport, not by the air carriers.

8. The proposal for an "electronic bulletin board" containing security data should be reconsidered.

9. Numerous industry and government task forces are already at work on many of the problems addressed by the proposed legislation. Congress will achieve better legislation ad/or regulation when the results of this work are available.

U.S. Postmaster General,
October 10, 1990.

Honorable Wendell H. Ford Chairman,
Subcommittee on Aviation Committee on Commerce, Science and Transportation United States Senate Washington, D.C

Dear Senator Ford. In response to your request for our views regarding S. 2822, the proposed Aviation Security Act of 1990, I am pleased to inform you that we strongly support the mail security provisions contained in section 11 of the proposed amendment in the nature of a substitute to that bill, now under consideration by your Subcommittee.

The United States Postal Service is vitally concerned about aviation security. During the past year, we have played an active role with the President's Commission on Aviation Security and Terrorism, and have joined with interested Federal agencies and the Congress in the consideration of this crucial matter.

Because we are sworn to uphold the Constitutional protections against warrantless intrusion into sealed mail, we are also deeply concerned that measures to enhance aviation security should not require a substantial portion of the Nation's mail to be subject to warrantless inspection by the Government. Our concern is not only that such provisions would measurably reduce the historic right of the American public to privacy of the mails, but also that mail service would inevitably be delayed by screening procedures which did not, in fact, enhance the safety of air travel.

Each day, the Postal Service tenders to air carriers about 1,127,000 pieces of mail weighing one pound or more. Existing technology does not provide a reasonable, effective means of screening this volume of mail. As a practicable alternative, we have published for comment in the Federal Register (55 F.R. 29637, July 20, 1990) a proposed regulation which would allow the warrantless examination, by any means short of opening, of mail sealed against inspection where we determine that there is a credible threat that the mail to be examined could contain a bomb.

To resolve any potential question regarding the scope of our contemplated actions, we have recommended that the Congress consider enacting specific legislation to ratify the examination procedures described in our proposed regulation. As stated earlier, I am particularly gratified to see that the proposed substitute to S. 2822 contains such provisions. I offer my strongest support to the portions of the substitute relating to mail security, which I believe offer the best and most practical solution to this problem. I urge that they be given favorable consideration as the Congress proceeds on this matter.

It has been a pleasure working with you and your staff on this important legislation. We will, of course, be pleased to provide any additional assistance you may require.

Sincerely,

Anthony M. Frank

STATEMENT OF THE AIR TRANSPORT ASSOCIATION OF AMERICA

1. Deployment of Explosive Detection Equipment. The language of sect ion 9 about deployment of explosive detection equipment is superior to that of HR 5200, because it places meaningful and appropriate conditions upon the authority of the FAA to order the use of such equipment. However, the direction to the FAA to consider in making a deployment decision whether the equipment unreasonably impedes the processing of passengers, baggage, and cargo, or disrupt air carrier flight schedules should be strengthened. The deployment of explosive detection equipment should be explicitly prohibited if it were to result in the creation of any of those results. In view of the extraordinary security measures that airlines have been undertaking at high-threat locations since late 1988, explosive detection equipment should not be introduced into service unless it can function without disrupting airline operations.

2. Screening of Mail and Cargo. The screening of mail and cargo tendered to air carriers by freight forwarders can be most effectively conducted by postal authorities and forwarders, respectively. Imposing such screening requirements upon air carriers would result in their airport freight facilities being overwhelmed, thereby disrupting flight operations. Screening of mail and air freight forwarder-originated shipments is more efficaciously performed "upstream" from the direct air carrier.

The Indirect Air Carrier Task Force of the Federal Aviation Administration's Aviation Security Advisory Committee has examined the issue of mail and cargo security. It is about to make recommendations to the Advisory Committee. Consequently, rather than create at this time a specific statutory screening requirement, the bill should instead direct the FAA to report to Congress within 180 days its recommendation for mail and cargo security.

3. Civil Penalties. The triple civil penalty provision should be eliminated because no demonstrable need exists to create such authority to assure air carrier compliance with FAA security regulations. As recent experience clearly indicates, existing civil penalty authority in the Federal Aviation Act provides the FAA with sufficient wherewithal to conduct a vigorous enforcement program.

Moreover, any civil penalty provision should be cause-based; section 13, in contrast, could be invoked when a violation of a rule merely "contributed to" one of the events enumerated in it.

That is too low a threshold to invoke an extraordinary penalty. Section 13 should therefore be deleted.

4. Manifest Information. U.S. air carriers have pledged to provide manifest information to government authorities as soon as possible after receiving notification of an accident. However, in some instances the one-hour time limit established in the bill may not prove feasible. The bill appropriately recognizes that possibility.

The manifest information collection requirements need clarification to avoid creating serious practical problems in implementing them. The bill would require that the air carrier request the manifest information from all passengers. However, if the passenger declines to provide the manifest information or provides false information, the carrier should not expect to seek to obtain the information by other means and it should not refuse to make a reservation or to board such a passenger.

Consequently, subsection (b) should be amended to clarify that in exercising authority under it the Administrator shall only impose requirements on air carriers that direct a carrier to request manifest information. Subsection (b) should state that a carrier should not be required to deny boarding to a passenger who refuses to respond to a request for manifest information. Moreover, a carrier should not be required to seek such information through other means. Under both subsections (a) and (b) of the bill, obtaining manifest information should not be a precondition for accepting a reservation or for allowing a passenger to board an aircraft.

Finally, subsection (b) should state that in those circumstances where passengers originally scheduled to travel on a foreign air carrier are shifted, for operational or other reasons, to a U.S. air carrier, the U.S. air carrier receiving those passengers shall be entitled to rely on the manifest information that the foreign air carrier provides. Because it should not be the intention of this legislation to force an unreasonable international departure delay or forego an international airport departure slot while a carrier validates or establishes complete manifest information, the U.S. air carrier should not be required to take any additional steps to obtain the information enumerated in subsection (a) or required by subsection (b).

5. Implementation of Security Requirements. Section 26(c) would require air carriers to report to the FAA any difficulties that they encountered in implementing U.S. Government-mandated security requirements at foreign airports. Unhappily, this provision would not require the FAA to assume the essential role of on-site liaison with government authorities at foreign airports that U.S. air carriers serve. The problem that

U.S. air carriers encounter is not in informing the FAA of their security- related difficulties at foreign airports; rather, it is in obtaining the assistance of the U.S. Government in correcting those difficulties. Consequently, this bill should explicitly assign the FAA a liaison responsibility at foreign airports.

6. Level Playing Field. Although we appreciate the increased security requirements for foreign air carrier operations to and from the United States that section 26 would impose, those requirements still would not assure the imposition upon foreign air carriers of the identical security measures that U.S. air carriers must fulfill. Given the fact that almost 50 percent of U.S. citizens who take international trips by air travel on foreign air carriers, any shortfall in the security measures that such carriers undertake is unacceptable. Furthermore, that disparity provides those carriers with a competitive advantage. Consequently, the "or equivalent" language of section 26 should be deleted.

○